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**HARPER'S PARALLEL  
SOURCE PROBLEM SERIES**

**SOURCE PROBLEMS IN UNITED STATES HISTORY  
SOURCE PROBLEMS IN ENGLISH HISTORY  
SOURCE PROBLEMS IN MEDIAEVAL HISTORY  
SOURCE PROBLEMS OF THE FRENCH REVOLUTION**

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HARPER'S PARALLEL SOURCE PROBLEMS

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# SOURCE PROBLEMS IN ENGLISH HISTORY

BY

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## PREFACE

THIS volume conforms to the basic notion of the series to which it belongs, the grouping of sources about a given problem or theme for intensive study instead of stringing together "fragments" in chronological order. It is better teaching to have a few source orgies at set times during the course than to be habitually taking the sources in attenuated doses. Yet in one respect this work is a variant: in most cases its sources are *vertical* rather than *parallel*. None of these studies deals with a single episode. Most of them cover rather long periods and are concerned with the broader problems of the origin and development of certain political practices, with critical periods in national struggles, or with economic and social changes. The editors have often attempted to set such problems while using source books of the older type. The present grouping and the introductory material should greatly aid this kind of work.

The difficulties in preparing such a book are obvious. It may well be wished that the first problem should be the simplest one, and that each succeeding problem should be somewhat more difficult and complex; but the problems must be taken

## Preface

up chronologically, and easy ones which have the other needed qualities do not always come early, nor the hard ones late. The origin of the jury is a hard matter, while the Veto Bill of 1911 involves no elaborate analysis of the sources. There is a further difficulty of reconciling the demand for a neat problem that would lend itself to practice in handling original materials and that would give the satisfaction of a clean-cut solution with the demand for a group of sources that will illustrate and reveal the important things of history. And the greatest difficulty has been that space requirements have made necessary the omission of some aspects of the problems which are both interesting and illuminating. Yet it is hoped that, while intensive work and method have been kept in view, enough material has been furnished, and with a sufficient distribution, to be useful for illustrative purposes and to stimulate interest. The questions and suggestions which accompany the problems are offered with many misgivings. The vital question which provokes thought is the question struck out in the give-and-take of class-room discussion. Any questions printed with source material must be comparatively tame and formal. They may help the student to answer that perennial initial query, what he is to do with the unfamiliar stuff before him, and they may serve as starting-points for the work in class. The questions have not all been fashioned to fit the average

## Preface

undergraduate intelligence. Some of them, which the instructor will have no trouble in recognizing, are, like the originals in geometry, for the exercise and enjoyment of the ablest members of the class. Students should be diligently reminded that they must study the introductory statements as well as the source material itself before they attempt to answer the questions.<sup>1</sup>

The book is intended for use in the more general and elementary college courses in English history. If it leans to the governmental it is because the editors feel that any good course in English history must emphasize that aspect. But it is not intended—as the reader can see at a glance—for any advanced work in English constitutional history. A book of source problems will of course always be used in connection with a narrative text; hence the sections entitled “The Historical Setting of the Problem” take many routine facts for granted. The editors have used these sections to present such material or to urge such points of view as they believe should be very prominently in mind when the student attacks the sources. Occasionally important facts have been omitted from the statements introductory to the sources, when it has been deemed a legitimate part of the problem for the student to find out these facts for himself.

<sup>1</sup>Mr. White is responsible for Problems I-IV, and Mr. Notestein for Problems V-VIII.

## Preface

There are a few great documents so indispensable to the study of English history, documents which have become such a standard tradition in teaching the subject, that every source book, whatever its plan, should print them in full. It is hoped that the seven documents printed in the Appendix include most of those which belong beyond question in such a select list. Where the whole or part of any of these documents is related to one of the problems, the appropriate reference has been made; but their independent position in the Appendix will make it convenient for the teacher to use them in any way he may choose.

We desire to express our thanks to all who have assisted in the preparation of the material, with especial reference to Professor Munro, the general editor of this series. Professor Bertha H. Putnam has given her expert knowledge very freely and cordially in connection with phases of Problem IV; Dr. W. S. McKechnie and his publishers, Messrs. Maclehose, have distinctly increased the worth of the book by their ready permission to use his translation of Magna Carta, and we are indebted to Professor Cheyney for the use of his translation of the Extent of the Manor of Borley. Professor Seligman has kindly allowed us the use of his excellent summary of the Budget of 1909. Upon the Problem of the Parliament Act, Professor C. D. Allin has given wise suggestion. For help upon some of

## Preface

the American aspects of Problems VI and VII the writers are very thankful to Professor Carl Becker and to two former colleagues, Professors W. M. West and F. M. Anderson.

A. B. W.  
W. N.

MINNEAPOLIS,  
July 7, 1915.





## INTRODUCTION

TWENTY years ago the value of the use of sources in teaching history was generally recognized. But usually only detached fragments were employed, and these served only to interest the student and to vivify the narrative. There were a few exceptions, such as some of the numbers in the series of Translations and Reprints from the Original Sources of European History, published by the University of Pennsylvania. Even these, however, did not furnish any setting for the problem, or suggest the important questions which were to be solved. Consequently the average teacher was not able to employ such material to the best advantage.

When the first volume in this series, by Duncalf and Krey, was published, a very important advance was made. For then there was a sufficient amount of apparatus to enable teachers to use the material in a satisfactory manner. One keen reviewer wrote, "The thorough carrying out of the method even in this small field will afford critical training such as few students of history, we fear, now get in either

## Introduction

school or college." The same may be said of the present volume.

Among its strong points, three especially may be enumerated. The stress is laid upon the development of the English government, which is the most important feature to be emphasized in the study of English history. The connection between English institutions and those of New England is brought out in one of the problems. This suggests the self-evident truth that the early settlers in New England got their experience in governmental affairs not from their knowledge of or participation in the central government of England, but because they were necessarily concerned with the affairs of their own parish. This truth, although self-evident, has too frequently been lost sight of in our teaching of English history. Lastly, the connection between the present and the past is well brought out, notably in the last problem, so that the student will be led to feel that the history which he has been studying is essential for an understanding of present-day conditions.

It was a fortunate chance that two scholars, one of whom had specialized in medieval English history and the other in the modern history of Great Britain, should have been found to undertake this task. Probably no one author could have been as well equipped for this work. Two results are especially noteworthy. First, that the translations

## Introduction

of the medieval documents are scholarly and accurate; no one, except a specialist, realizes how difficult it is to make an adequate translation. Secondly, some of the material included is distinctly novel in character, and bears witness to the broad knowledge of the editors. It was a happy idea to publish, in the Appendix, some of the more important documents for the development of the English government. This will, in many cases, obviate the necessity of the purchase of an additional volume. I am confident that this book is the most valuable aid which has been prepared for the teaching of English history in secondary schools or in elementary college classes.

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## PROBLEM I

### I.—Alfred and the Danes



# SOURCE PROBLEMS IN ENGLISH HISTORY

## Alfred and the Danes

### I. THE HISTORICAL SETTING OF THE PROBLEM

**I**T is important to understand at the outset that this first source study centers in the most critical period of a movement which affected not England only, but the whole of Europe. The invasions and settlements from the Scandinavian north spread "from Iceland to Constantinople, from Russia to Spain." These tremendous outpourings, which were progressing during the ninth century in a veritable geometrical ratio, were the last in that vast series of "wanderings of the peoples" which had brought the Roman Empire to an end and created a new Europe. In the earlier movements the northern peninsulas had had no share. Britain had been invaded and settled in the fifth and sixth centuries by the Anglo-Saxons at the same time that the continental portions of the Empire were overrun by less distant Teutonic tribes; but the extreme north remained then and for long after-

## Source Problems in English History

ward strangely inactive. Now in the ninth century the flood which had long held back broke with the greater fury. Enough time had passed for the earlier invaders to assimilate many good things which they found in the southern civilization and to make their contribution of virile and clean blood. They were already Christian in more than name. Such loss of classic civilization as was inevitable had been suffered. But all had not been lost; and now the blackest centuries of the dark ages, the sixth and seventh, lay behind. Europe was getting well started upon the slow but hopeful journey toward the light of modern times. Was this new inundation to bring on a second and more hopeless dark age?

Beyond the fundamental cause of a rapidly increasing population in lands not fitted to sustain it, several causes more immediate to the ninth century help to account for the viking raids. The first has to do with the northern extensions of Charlemagne's empire, especially his generation-long struggle with Saxony, ending finally in complete conquest. This struggle not seldom involved directly or indirectly the people of Denmark and even of Scandinavia, who were led to fear advancing Christendom as their greatest foe. When they went forth to conquer they were eager to strike at Christian states wherever found, and they did not distinguish nicely between those inside and outside the Frankish empire. Of course the love of plunder and adventure played a commanding part once the wealth of the southern lands and the weakness of their governments were known. At first there were desultory raids directed against the places where the resistance was least, and with little or no concerted action among the petty bands under their viking leaders. As the years passed and the invaders multiplied and became more familiar with the invaded regions, the lure of the



## Alfred and the Danes

south extended beyond that of mere portable plunder. For these invaders came from among a people of settled life, engaged in agriculture and grazing, and the south seemed a pleasant place to live in as well as to plunder. Real estate had rather more enduring charms than chattels. This natural change coincided roughly with new conditions at home, especially in Denmark, but soon to some extent in Norway also. There was a growing unity and central power under the first real kings in these countries. Piracy, suppressed at home, spread abroad, and many defeated petty chiefs, who scorned to live in subjection, sought a new career in the south. Moreover, the movements were no longer monopolized by people who were pirates by nature and choice, but by the more stable, land-seeking element. Desultory plundering raids were gradually superseded by larger and better concerted movements with permanent colonization as a prominent object. But they never became a national migration under one great leader. The political units established in the conquered lands were always small, like the primitive settlements of the Anglo-Saxons who had passed through somewhat analogous stages—settlements that were the resultants of the different and often hostile aims of many petty chiefs. But confederations and combinations of formidable size might hold together for a short time when there was a particular point to gain or obstacle to overcome. Such were the “armies,” involving hundreds of boats and thousands of men, met by Alfred and the brother, Ethelred, who ruled just before him.

The viking raids became serious in England late in Egbert's reign, about the year 834. From that time there was but slight cessation until the crisis was passed in Alfred's reign, and as a result of his great leadership. The English invasions were very closely bound up with

## Source Problems in English History

those on the Continent and in Ireland, the same bands seeking either side of the North Sea, the English, or St. George's, Channel, according as the resistance on the one side or the other was more effective. A respite in one country always marked more serious trouble in another. About 855 in England the invading forces became much more numerous and their attacks better organized. This date approximately marks the change, just noted, from the earlier to the later phase of the invasions. When Alfred, twenty-two years of age, came to the throne in 871, northern and large sections of central England were under Danish control and Wessex was hard beset, fighting for her life. Alfred's year of succession was his "year of battles." Despite his wonderful efforts and his many partial or complete successes, the situation did not clear. During 875 and 876, both the entire Continent and Ireland were freer from Scandinavian invasions than they had been for very many years. This constituted a sinister prospect for England, and the crisis of the reign was near. The little country of Wessex was the objective of most of the important viking forces then operating in Europe. This fact and the fact that the situation was dominated by a real hero give compelling interest to the story that has come down to us in these brief and often obscure old chronicles. If England had been completely conquered, the Northmen would have gained vastly in prestige and would have possessed an effective base of operations against western Europe. Alfred did his work in England, but there needs no stretching of the facts to show its European significance. When he came to the throne the Northmen seemed to have the conquest of one great Christian nation well within their grasp, and others were sorely threatened. In the years following, the critical conflict was waged with this first great opponent that

## Alfred and the Danes

the vikings had encountered since their more wide-spread and purposeful efforts to colonize and conquer the south. Before his reign ended the tide had turned and the chances were much more than even that the hopeful beginnings of medieval civilization would be preserved. Probably at not many times in history has more depended upon a single great spirit than in certain dark weeks and months of this ninth-century English reign.

### II. INTRODUCTIONS TO THE SOURCES

#### 1. *The Anglo-Saxon Chronicle.*

"This is the oldest historical work written in any Germanic language, and is the basis of most of our knowledge of Anglo-Saxon history from the year 732 onward."<sup>1</sup> For perhaps two centuries before Alfred, one or more brief local annals, written in Latin, appear to have been kept in quite strictly contemporaneous fashion. Under some unknown influence these became expanded and developed about 855, shortly before the death of Alfred's father. Again there was a striking development late in Alfred's reign (893), and clearly under his influence. The record for 893-897 is particularly full and intelligent. It seems very probable that Alfred was the first to conceive the idea of a national chronicle written in the vernacular; and writers inspired and directed by him appear to have used what previously existing material they could obtain for writing up and making the new chronicle complete down to their time. Bede's great history was the main source to 732. From then to the middle of the ninth century they used the meager but more contemporaneous Latin annals. But even for the period of Alfred's public

<sup>1</sup> Gross, *Sources and Literature*, p. 177.

## Source Problems in English History

career the *Chronicle* is far from satisfactory. Three years (892, 899, 900) have no record at all. "Eight have merely brief entries of a line or two regarding the movements of the Danish army, or *here*; and of these eight entries the last three have nothing to do with England, being concerned with the doings of the *here* on the Continent. Two other very brief entries deal with the sending of couriers to Rome, and with certain obits." <sup>1</sup> After Alfred, the *Chronicle* ceased to be a unit, records being kept more or less independently at about five different religious houses. Hence it is correct to speak of the Anglo-Saxon chronicles. But the national idea remained, and Alfred's historical impulse showed extraordinary vitality. It had not spent itself at the Conquest, and this first and great *English* history did not end until the middle of the twelfth century.

### 2. Asser's *Life of King Alfred*.

It is now generally believed that this work was written by a contemporary of Alfred and probably by the man under whose name it has passed. Asser, bishop of St. David's and later bishop of Sherborne, appears to have spent several years about the middle of the reign at Alfred's court. Judging from his own account, he was aiding the king in his studies and in his literary undertakings. The Latin "Life" which he has left us follows a most unusual plan. Its foundation is a series of annals covering the years 851-887; and in these annals are inserted at various places sections of personal comment and anecdote relative to Alfred. These latter seem to be entirely original with Asser, while the annalistic portions clearly bear a close relation to the corresponding entries in the *Anglo-Saxon Chronicle*. Plummer remarks that the biographical sections were inserted in a way "so in-

<sup>1</sup> Plummer, *Alfred*, p. 12,

## Alfred and the Danes

consequent and inartistic, that one is sometimes almost inclined to think that the compiler, while keeping his annals (as he could hardly help doing) in chronological order, cut up his biographical matter into strips, put the strips in a hat, and then took them out in any order which chance might dictate." Yet the same style, language, and oddities of thought appear in both parts and force the conclusion that there was a single author. The passage here used is; it will be seen, from the annals Asser probably wrote while Alfred was still alive. Why his work stopped so suddenly at 887 is not known.

### 3. *Ethelwerd's Chronicle.*

Ethelwerd, who claimed that he was the great-great-grandson of Alfred's brother Ethelred, wrote late in the tenth century and brought his chronicle down to 973. He dedicated his work to a kinswoman, Matilda, who, he states, was descended in the same number of generations from Alfred. It has been shown that this was Matilda of Swabia, granddaughter of the Emperor Otto I. and his first wife Edith, daughter of Edward the Elder of England. Ethelwerd was probably the ealdorman of that name who witnessed a number of charters between 976 and 998, and who is otherwise heard of in that period. His very pompous and obscure Latin history is yet worthy of study because it is clear that he used an earlier version of the *Anglo-Saxon Chronicle* than any extant. This version lacked some things found in the later manuscripts, but clearly contained points of importance which they lack. These would have been lost but for Ethelwerd's work. But sometimes he did more than follow his copy of the *Chronicle*; and in view of his time, his position, and his connections with the House of Wessex, it seems likely that he had access to such written and traditional material as to make his additions worthy of notice. It

## Source Problems in English History

was most remarkable for any but a churchman to undertake to write a chronicle. Undoubtedly his lack of a clerical training accounts largely for his very bad Latin.

### 4. *Alfred and Guthrum's Peace*.

There is no reasonable doubt that this is the authentic text of an undated treaty drawn up between Alfred and the Danes. It was written in Anglo-Saxon. Sufficiently interesting and instructive in itself, the treaty has an added importance because of the great dearth of official documents of all sorts from Alfred's time. After using chronicles and being constantly on the alert for errors growing out of bias, carelessness, or ignorance, it is pleasant to use even a small bit of evidence with which no care of that sort has to be taken.

### III. QUESTIONS AND SUGGESTIONS FOR STUDY

1. Make a list of the important differences in style and subject-matter between the *Anglo-Saxon Chronicle* and *Asser*.
2. Prove, if possible, by a careful comparison whether *Asser* copied from the *Chronicle* or whether the *Chronicle* was copied from *Asser*.
3. Is any hint to be found of *Asser's* nationality?
4. What are the obvious faults of *Ethelwerd's* method of writing history? *misleading, lacked something of grasp*
5. What bits of information are to be gathered from *Ethelwerd* not obtainable from the other sources? *nothing of value*
6. How does the class of source material to which *Alfred and Guthrum's Peace* belongs differ from chronicles? Why must chronicle material be used with greater caution?
7. On an outline map of England indicate the places mentioned here in Alfred's campaigns which have been located with a fair degree of certainty; also draw the boundary between Alfred's dominions and the Dane-law described in *Alfred and Guthrum's Peace*.

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8. What specific point of time in the period here shown would you pick out as marking the crisis or turning-point in the struggle?
9. How do you account for the slight entries in the chronicles for some of these years?
10. What seems to have been the typical viking method of making an incursion into a country?
11. By studying it in connection with the other sources, assign a date to *Alfred and Guthrum's Peace*. Find out whether or not the date you have chosen is the one which has usually been assigned to it.
12. What are the objects of the last four articles of *Alfred and Guthrum's Peace*, and what kind of relations between English and Danes do they seem to expect? Are English and Danes placed on a strict equality? What three well-known early judicial practices are illustrated in this document?
13. What indications are there of relations, political or of other kinds, existing between Wessex and the Continent?
14. Draw up a statement of the continental invasions of the Northmen based on the accounts here given.

The following suggestions for further study involve some supplementary reading:

1. By use of Plummer's *Life and Times of Alfred* and Stevenson's *Asser's Life of King Alfred*, trace the history of the old legend of Alfred in the cowherd's hut and the burning of the cakes. Show first what is known of the origin of the story; secondly, when and how it became incorporated in *Asser's* text; and thirdly, how modern scholarship has dealt with it.
2. In some detailed history of the period, look up the legend of the Raven Flag mentioned in the *Chronicle* as lost by the Danes in 878.
3. Why was it that the final conquest of England by the Danes in the eleventh century did not threaten English or continental civilization to the same extent that these ninth-century invasions did?

## IV. The Sources

1. *The Anglo-Saxon Chronicle*. (Anglo-Saxon text and translation, edition of Benjamin Thorpe in the *Rolls Series*.)

878. In this year, at Midwinter, after Twelfth-  
5 night, the army stole itself away to Chippenham,  
and harried the West Saxons' land, and settled there,  
and drove many of the people over sea, and of the  
remainder the greater portion they harried, and the  
people submitted to them, save the king, Alfred, and  
10 he, with a little band, withdrew to the woods and  
moor-fastnesses. And in the same winter the  
brother of Inwar and Halfdene was in Wessex, in  
Devonshire, with twenty-three ships, and he was  
there slain, and with him eight hundred and forty  
15 men of his force. And there was the standard taken  
which they call the Raven. And the Easter after,  
Alfred, with a little band, wrought a fortress at Athel-  
ney, and from that work warred on the army, with  
that portion of the men of Somerset that was  
20 nearest. Then in the seventh week after Easter  
he rode to Egbert's stone, on the east of Selwood,



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and there came to meet him all the Somersetshire men, and the Wiltshire men, and that part of Hampshire which remained of it on this side of the sea; and they were rejoiced on seeing him; and one night  
5 after, he went from the camp to Æglea, and one night after that to Edington, and there fought against all the army, and put it to flight, and rode after it, as far as the works, and there sat fourteen nights. And then the army gave him hostages with great  
10 oaths that they would depart from his kingdom; and also promised him that their king would receive baptism; and that they so fulfilled; and three weeks after, King Guthrum came to him, with thirty of the men who were most honorable in the army, at Aller,  
15 which is opposite to Athelney; and the king received him there at baptism; and his chrism-loosing was at Wedmore; and he was twelve nights with the king; and he largely gifted him and his companions with money. *Time more filled in.*

20 879. In this year the army went to Cirencester from Chippenham, and sat there one year. And in that year a body of vikings assembled, and sat down at Fulham on the Thames. And that same year the sun was eclipsed one hour of the day. *7 dat*

25 880. In this year the army went from Cirencester to East Anglia, and occupied and divided the land. And in the same year the army, which had before sat down at Fulham, went over sea to Ghent in France, and sat there one year. *East Francia in answer*

## Source Problems in English History

881. In this year the army went up into France, and the French fought against them; and there was the army horsed after the fight.

882. In this year the army went up along the  
5 Meuse far into France, and there sat one year. And that same year King Alfred went out to sea with ships, and fought against four ship-crews of Danish men, and took two of the ships, and the men were slain that were therein; and the two ship-  
10 crews surrendered to him; and they were sorely fatigued and wounded before they surrendered.

883. In this year the army went up the Scheldt  
7 to Condé, and there sat one year. And Marinus  
2 the pope then sent *lignum domini* [of Christ's cross]  
15 to King Alfred. And in the same year Sighelm and Athelstan conveyed to Rome the alms which the king had vowed [to send] thither, and also to India, to St. Thomas, and to St. Bartholomew, when they sat down against the army at London; and there,  
20 God be thanked, their prayer was very successful after that vow.

884. In this year the army went up the Somme to Amiens, and there sat one year. In this year died the benevolent Bishop Æthelwold.<sup>1</sup>

25 885. In this year the fore-mentioned army separated into two; one part [went] east, the other part  
30 to Rochester, and besieged the city, and wrought another fastness about themselves; but they, never-

<sup>1</sup> Evidently a copyist's error; Æthelwold died in 984.

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theless, defended the city until King Alfred came without with his force. Then the army went to their ships, and abandoned the fastness; and they were there deprived of their horses, and forthwith, in the  
5 same summer, withdrew over sea. And the same  
10 year King Alfred sent a naval force from Kent to East Anglia. As soon as they came to the mouth of the Stour, then met them sixteen ships of vikings, and they fought against them, and captured all the ships,  
15 and slew the men. When they were returning homeward with the booty, a great naval force of vikings met them, and then fought against them on the same day, and the Danish gained the victory. In  
20 the same year, before midwinter, Carloman, king of the Franks, died, and a wild boar killed him; and one year before his brother died; he also had the western kingdom; and they were both sons of Lewis, who also had the western kingdom, and died in the year when the sun was eclipsed, who was the son of Charles,  
25 whose daughter Ethelwulf, king of the West Saxons, had for his queen. And in the same year a larger naval force assembled among the Old Saxons; and there was a great fight twice in that year, and the Saxons had the victory; and there were Frisians with them.  
In that same year Charles succeeded to the western kingdom, and to all the kingdom on this side of the Mediterranean Sea, and beyond this sea, as his great-grandfather had it, excepting the Lidwicas [Brittany]. Charles was the son of Lewis,

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Lewis was brother of Charles, who was father of Judith, whom King Ethelwulf had; and they were sons of Lewis; Lewis was son of the old Charles; Charles was the son of Pepin. And in the same year the good Pope Marinus died, who freed the Angle race's school, at the prayer of Alfred, king of the West Saxons; and he sent him great gifts, and part of the rood on which Christ suffered. And in the same year the army in East Anglia brake peace  
10 with King Alfred.

886. In this year the army again went west, which had before landed in the east, and then up the Seine, and there took winter quarters at the city of Paris. In the same year King Alfred restored  
15 London; and all the Angle race turned to him that were not in the bondage of the Danish men; and he then committed the burgh to the keeping of the ealdorman Etherned.

2. *Asser's Life of King Alfred*. (Latin text in W. H. Stevenson's *Asser's Life of King Alfred*. Translation by the Editor.<sup>1</sup>)  
20

In the year of our Lord's incarnation the eight hundred and seventy-eighth, and the thirtieth from King Alfred's birth, the oft-mentioned army left  
25 Exeter and came to Chippenham, a royal vill located in the north of Wiltshire on the eastern

<sup>1</sup> Unfortunately, Professor Cook's excellent translation was not available for the present purpose. (A. S. Cook, *Asser's Life of King Alfred*. Ginn & Co., 1906.)

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bank of the river called Avon in Welsh, and there wintered. And through force of arms and want, as well as through fear, they drove many of the people there to go beyond sea, and brought most of  
5 the inhabitants of the district under their rule.

At the same time the said King Alfred, with a few of his nobles and some knights and men of his household, was in great distress leading an unquiet life in the woods and marshes of Somerset. For he had  
10 no means of support except what he took in frequent raids by stealth or openly from the pagans, or indeed from Christians who had submitted to pagan rule.

In the same year the brother of Inwar and Halfdene with twenty-three boats sailed forth from the  
15 country of Dyfed,<sup>1</sup> where he had wintered and where he had slain many Christians, to Devon; and there, before the stronghold of Cynwit,<sup>2</sup> he with twelve hundred others was miserably cut off in his wrong-doing by the king's followers, for many of  
20 the latter had shut themselves up there for safety. But when the pagans saw the stronghold unprepared and unguarded except for defenses built after our manner, they did not venture to storm it because from the nature of the ground the place was very  
25 secure on every side except on the east, as I myself have seen; instead they began to besiege it, thinking that those men would quickly be forced to surrender

<sup>1</sup> The extreme south of Wales.

<sup>2</sup> Location unknown.

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because of hunger and thirst, for there was no water near. But it did not turn out as they expected. For the Christians, before they suffered any such straits, prompted by God to believe it much better  
5 to win either death or victory, at dawn made an unexpected sortie upon the pagans, and shortly slew most of them, together with their king, only a few escaping to the boats.

In the same year after Easter, King Alfred, with  
10 a few to help him, made a stronghold in a place called Athelney, and thence kept tirelessly making attacks upon the pagans with his Somersetshire retainers. And again in the seventh week after Easter he rode to Egbert's Stone, which is in the eastern part of  
15 the forest called Selwood—in Latin "Sylva Magna," in Welsh "Coit Maur"—and there met him there all the dwellers about the districts of Somerset, Wiltshire, and Hampshire, who had not through fear of the pagans gone beyond sea; and when they saw the  
20 king, after such great sufferings, almost as one risen from the dead, they were filled with unbounded joy, as it was right they should be; and they pitched camp there for one night. At dawn the next morning the king moved his camp thence and came to a  
25 place called Æglea,<sup>1</sup> and there encamped one night.

Moving his standards thence the next morning,

<sup>1</sup> Probably in Wiltshire. "It is probably an older name of Southleigh Wood, or part of it." Stevenson, *Asser's Life of King Alfred*, p. 272.

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he came to a place called Edington, and with a close shield-wall fought fiercely against the whole arm of the pagans; his attack was long and spirited and finally by divine aid he triumphed and over-  
5 threw the pagans with a very great slaughter. He pursued them, killing them as they fled up to the stronghold, where he seized all that he found outside—men, horses, and cattle—slaying the men all at once; and before the gates of the pagan fortress he  
10 boldly encamped with his whole army. And when he had stayed there fourteen days and the pagans had known the horrors of famine, cold, fear, and at last of despair, they sought a peace by which the king was to take from them as many named hostages  
15 as he wished while he gave none to them—a kind of peace that they had never before concluded with any one. When the king heard their message he was moved to pity, and of his own accord received from them such designated hostages as he wished.  
20 In addition to this, after the hostages were taken the pagans took oath that they would most speedily leave his kingdom, and also Guthrum, their king, promised to accept Christianity and to receive baptism at the hands of King Alfred. All these things  
25 he and his men fulfilled as they had promised. For after three weeks Guthrum, king of the pagans with thirty selected men of his army, came to King Alfred at a place called Aller near Athelney. And Alfred received him as son by adoption, raising him

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from the sacred font of baptism; and his chrism-loosing<sup>1</sup> on the eighth day was in the royal vill called Wedmore. After he was baptized he stayed with the king twelve nights, and to him and all  
5 the men with him the king generously gave many valuable gifts.<sup>2</sup>

In the year of our Lord's incarnation the eight hundred and seventy-ninth, and the thirty-first from King Alfred's birth, the said army of pagans left  
10 Chippenham according to promise and went to Cirencester (in Welsh "Cairceri"), located in the southern part of the district of the Hwicce,<sup>3</sup> and there spent a year.

In the same year a great army of pagans from  
15 foreign parts sailed up the Thames River and joined the larger army, but wintered at a place called Fulham by the Thames.

In the same year an eclipse of the sun occurred between nones and vespers, but nearer to nones.<sup>4</sup>

20 In the year of our Lord's incarnation the eight

<sup>1</sup> For an account of this ceremony, see Cook, *Asser's Life of King Alfred*, pp. 29-30, note 3.

<sup>2</sup> The parallel passage in the *Chronicle* probably proves that this was Asser's meaning; not only Guthrum, but the thirty men who  
25 came with him, received presents. But a strict construction of Asser's Latin undoubtedly justifies the traditional translation according to which the men mentioned were Alfred's, who joined the king in bestowing gifts on Guthrum only.

<sup>3</sup> Includes approximately the later counties of Gloucester and  
30 Worcester.

<sup>4</sup> A full discussion of this eclipse may be found in Stevenson, *Asser*, pp. 280-286.



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hundred and eightieth, and of King Alfred's life the thirty-second, the oft-mentioned army of pagans left Cirencester and went to the East Angles; and dividing this district, they began to settle there.

- 5 In the same year the army of pagans which had wintered at Fulham left the island of Britain crossed the sea, and came to East Francia. I remained for a year at a place called Ghent.

In the year of our Lord's incarnation the eighth  
10 hundred and eighty-first, and the thirty-third from King Alfred's birth, the said army penetrated farther into Francia. Against it the Franks fought and when the battle was over the pagans had gotten horses and became a mounted force.

- 15 In the year of our Lord's incarnation the eighth hundred and eighty-second, and the thirty-fourth from King Alfred's birth, the said army pushed its boats up the river Meuse much farther into Francia and spent a year there.

- 20 And in the same year Alfred, king of the Anglo Saxons, fought a battle at sea against pagan boats and he took two of them, having killed all who were in them. • And the commanders of two other boats, with all their fellows, were so thoroughly beaten and so badly  
25 wounded that they laid down their arms and orbended knees and with humble prayers surrendered

In the year of our Lord's incarnation the eighth hundred and eighty-third, and the thirty-fifth from King Alfred's birth, the said army pushed its boat

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up-stream along the river Scheldt to a convent of nuns known as Condé, and there remained one year.

In the year of our Lord's incarnation the eight hundred and eighty-fourth,<sup>1</sup> and the thirty-sixth  
5 from King Alfred's birth, the said army divided into two troops. One went to East Francia, and the other came to Kent in Britain and besieged the city which is called Rochester in Saxon, and which is located on the east bank of the Medway. Before its gate  
10 the pagans quickly built themselves a strong tower; but they were not able to take the city, because the citizens defended themselves vigorously until King Alfred came to its aid with a large army. And then the pagans, on the unexpected arrival of the king, left  
15 their tower and all the horses which they had brought with them from Francia, and also most of their captives, and fled in haste to their boats, while the Saxons seized the captives and the horses. And so the pagans were forced by extreme necessity to  
20 sail again into Francia that same summer.

In the same year Alfred, king of the Anglo-Saxons, transferred his fleet, filled with warriors, from Kent to the East Angles for the sake of plunder. And when they had come to the mouth of the river Stour,  
25 suddenly thirteen boats of the pagans, ready for battle, met them; and a naval battle was begun

<sup>1</sup> "Asser accidentally omits the annal 884, which is a very brief one in the *Chronicle*. Consequently, he mechanically puts the events of 885 under 884." Plummer, *Life and Times of Alfred*, p. 50.

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which was bitterly contested on both sides, but which resulted in the killing of all the pagans and the seizure of all their boats and goods. However, while the victorious royal fleet was resting, the  
5 pagans who lived in the land of the East Angles gathered boats together from any place in which they could find them and met the king's fleet at the mouth of the same river, and in the battle which followed gained the victory. ✓

10 In the same year also Carloman, king of the East Franks, while on a boar-hunt was so horribly bitten by a boar that he died. His brother was Lewis, who had died the year before and who was also king of the Franks; they were both sons of Lewis, king of  
15 the Franks. This was the Lewis who had died in the above-mentioned year in which the eclipse took place, and who was son of Charles, king of the Franks, whose daughter Judith was, with her father's consent, taken as queen by Ethelwulf, king  
20 of the West Saxons.

Moreover, in the same year a great army of pagans came from Germany to the land of the Old Saxons, in Saxon called "Eald Seaxum." Against them these same Saxons and the Frisians joined forces and  
25 fought bravely twice in that year. By divine mercy the Christians won both these battles.

Also in this year Charles, king of the Germans, acquired, with the voluntary consent of all, the kingdom of the East Franks and all the kingdoms

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which are between the Tyrrhenian Sea and that ocean gulf which lies between the Old Saxons and the Gauls, excepting the kingdom of Amorica.<sup>1</sup> This Charles was the son of King Lewis, and Lewis was the brother  
5 of that Charles, king of the Franks, who was father of Judith, the above-mentioned queen; and these two brothers were sons of Lewis, who was the son of Charles, the son of Pippin.

In the same year Pope Marinus of blessed memory  
10 went the way of all flesh. He it was who for love and at the petition of Alfred, king of the Anglo-Saxons, graciously released the colony of the Saxons residing in Rome from all tribute and toll. Indeed, he took the occasion to send many gifts to the said  
15 king; among which was no small portion of that most holy and revered cross on which our Lord Jesus Christ hung for the salvation of all men.

And also in this year the army of pagans which was living among the East Angles disgracefully broke the  
20 peace which it had entered into with King Alfred.<sup>2</sup>

\* \* \* \* \*

In the year of our Lord's incarnation the eight hundred and eighty-sixth, and the thirty-eighth of

<sup>1</sup>Brittany.

25 <sup>2</sup> At this point in the annals, a long section of more strictly biographical matter is introduced. In this the following topics are treated: Alfred's maladies; his children and their education; his varied pursuits; his scholarly associates; Asser's negotiations with Alfred; the Welsh princes who submitted to Alfred, and how he  
30 rewarded their submission.

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Alfred's life, the oft-mentioned army fleeing from this region went again into the land of the West Franks; they entered by the river called Seine and pushed far up-stream in their boats even to the city  
5 of Paris, and there wintered. And they laid out their camp on both sides of the river near to the bridge in order to keep the citizens from crossing—for this city is located on a small island in the middle of the river. And they besieged the city that whole  
10 year, but through God's favor and the vigorous defense of the citizens they could not break the fortifications.

In the same year Alfred, king of the Anglo-Saxons, after the burning of cities and the slaughter of people,  
15 honorably restored the city of London and made it habitable; and he intrusted its defense to Ethelred, ealdorman of the Mercians. And all the Angles and Saxons who had before been widely scattered or who were in captivity<sup>1</sup> with the pagans  
20 voluntarily turned to the king and placed themselves under his rule.

3. *The Chronicle of Ethelwerd*. (Latin text in Petrie's *Monumenta Historica Britannica*. This translation, with slight changes, from J. Stevenson's *The Church Historians of England*.)  
25

The barbarians renewed the peace, with a fraudulent intention, and more hostages than were demand-

<sup>1</sup> Undoubtedly a mistranslation from the *Chronicle* for "who were not in captivity."

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ed were given, for they promised to withdraw their forces from the territories of the illustrious King Alfred, and they did so. After ravaging the kingdom of Mercia, they drove out all the freemen; and  
5 after a changeable course they erected their huts at the town of Gloucester. Therefore, in the course of this year, this vile rabble broke their treaty with the West Angles, although it had been ratified by a firm oath; and they took up their winter quarters  
10 at Chippenham. But their cavalry rode over the necks of many of the people, so that the inhabitants had no place of safety from their tyranny, and all turned their minds quickly away from them. Then, with impious insolence, they drove many across the  
15 sea to the shores of Gaul. King Alfred, in truth, was at this time more straitened than became him. Æthelnoth also, duke of the province of Somerset, delayed with a small band in a certain wood; and they built a stronghold of some sort on the isle of  
20 Athelney, which is situated in a marsh, as may be seen. But the above-mentioned king, together with the whole province of Somerset, never ceased to engage in daily contests with the barbarians; and no others assisted him, except those servants who  
25 were provisioned at the king's expense. In the same year Halfdene arrived, the brother of the tyrant Inwar, with thirty galleys, on the territories of the  
West Angles, and besieged Odda, duke of the province of Devon, in a certain castle, and lighted up the

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flames of war within and without. The king of the barbarians perished, and eight hundred men with him. The Danes at last obtained the victory. Meanwhile, after Easter in that year, King Alfred hazarded  
5 a battle against the army which lay at Chippenham, at a place called Edington, but they obtained the honor of victory. But after the issue of the engagement, the barbarians promised peace, begged a truce, did not refuse hostages, and bound themselves  
10 by an oath; their king also submitted to the rite of baptism, and King Alfred, as sponsor, received him from the laver in the marshy isle of Alney. Duke Æthelnoth likewise purified the same king after his baptism, at a place called Wedmore, and there King  
15 Alfred loaded him with magnificent honors. Then, after a year from the period when the pagan army had set out from the city of Gloucester, it reached the town of Cirencester, and remained there during the winter season. In the course of this year the  
20 sun was eclipsed. In the year following this solar eclipse, the aforesaid army left Cirencester for the country of the East Angles; there they pitched their camp and reduced all the inhabitants under their yoke. Fourteen years had now been completed  
25 since the barbarians had first wintered in the aforesaid fields and had been provided with horses. Moreover, in the same year, after all the aforesaid country had been subjected to them, they set sail for Gaul and stationed themselves at a place called

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Ghent, being the very same troops who had formerly pitched their camp at Fulham. After a year they attempted to proceed farther; but the armies of the Franks assaulted them so vigorously that they gained  
5 the victory, while the barbarians were put to flight. After the lapse of a year the above-mentioned army passed into the higher districts of the river Meuse, and established their camp at Ascloha. In the same year King Alfred put out to sea and met with four  
10 of their ships; two of them he overcame and destroyed, and the remaining two surrendered. In the following year the above-named army set out for the districts above the Scheldt, at a place called Condé, and there fixed their winter quarters. After  
15 the expiration of a single year a violent slaughter committed by the aforesaid army broke out on the higher districts of the Somme, near the town of Amiens, and there they pitched their camp for the winter. Then, after a year, they divided themselves  
20 and spread over the country in two parts, the one occupying Louvain, and the other Rochester, and they besieged both these towns. They also constructed for themselves other smaller camps. The original inhabitants were defeated, till Alfred arrived  
25 with his western band. . . . Some of them retreated beyond the sea. In the course of that year they renewed their treaty by giving hostages to the Angles, and twice in the year they divided the spoil obtained by fraud in the densely wooded district close to the



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southern borders of the river Thames. The filthy crew which then held within its power the East Angles furnished their supplies, and then they suddenly sought an outward course toward Bamfleet.

5 There the united bands divided with ill-omened movements: some remained, and some departed beyond the sea. In the same year, therefore, the above-named King Alfred sent a fleet into the borders of the East Angles; and immediately on their arrival,

10 sixteen ships met them at Stourmouth; these were ravaged, and their captains slain with the sword; then the rest of the piratical fleet met that of Alfred; they plied their oars, they removed their sails, their arms glittered on the constrained waves, and at

15 length the barbarians achieved a victory. In the same year died Charles the Magnificent, king of the Franks, being cut off by death before the completion of one year; after him followed his own brother, who then ruled over the western coasts of Gaul.

20 Both were sons of Louis, who had formerly exercised the sole sovereignty; the close of his life took place during the aforesaid eclipse of the sun, and he was the son of the great King Charles, whose daughter Ethelwulf, king of the Angles, had married. In the

25 progress of that year, an assault was made by the barbarian fleet, with no small force, filling the shores of the Old Saxons; two battles were fought about the same time, and the Saxons were victorious. Friesland-ers also were present at the engagement. In

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the same year, Charles the younger succeeded to the sovereignty of all the western parts of Gaul, extending as far as the Tyrrhenian Sea, and, if I may say so, to all the dominions of his great grand-  
5 father, except the province of Amórica. His father was Louis, brother of the middle Charles, whose daughter Ethelwulf, king of the Angles, had married. And these two were sons of Louis, and he was the son of Charlemagne, and he was the son of  
10 Pepin. In the same year the blessed Pope Marinus departed, who gave liberty to the school of the Angles which now exists at Rome by the foresight of King Alfred, and he sent as a present a part of the thrice-blessed cross of Christ, in whom the salva-  
15 tion of the world shines forth. In the course of the same year, the aforesaid pestilential horde broke their agreement, and assailed King Alfred with their weapons. Then, after a year, they sought the lower parts of Gaul, and settled themselves permanently  
20 near the river Seine for the winter. Meanwhile the city of London was fortified by King Alfred—a man whom the cruelty of civil discord could never subdue by either ingenuity or assault; all men hailed him as their deliverer, especially the Saxons, with  
25 the exception, however, of the barbarians, and those who were then held as captives under their power. Also, after his armament there was strengthened, Ethered was appointed leader by the aforesaid king as the guardian of the citadel.

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4. *Alfred and Guthrum's Peace.* (Anglo-Saxon text in Liebermann: *Die Gesetze der Angelsachsen*. Translation from Stubbs's *Select Charters*, with one change suggested by Liebermann's German translation.)

This is the peace that King Alfred and King Guthrum, and the *witan* of all the English nation, and all the people that are in East Anglia, have all ordained and with oaths confirmed, for themselves  
10 and for their descendants, as well for born as for unborn, who reckon of God's mercy or of ours.

1. Concerning our land boundaries: Up on the Thames, and then up on the Lea, and along the Lea unto its source, then straight to Bedford, then up on  
15 the Ouse unto Watling Street.

2. Then is this: If a man be slain, we estimate all equally dear, English and Danish, at viii half marks of pure gold; except the *ceorl* who resides on rented land and their [the Danes'] freedmen; they  
20 also are equally dear, either at cc. shillings.

3. And if a king's thegn be accused of man-slaying, if he dare to clear himself on oath, let him do that with xii king's thegns. If any one accuse that man who is of less degree than the king's thegn,  
25 let him clear himself with xi of his equals and with one king's thegn. And so in every suit which may be more than iv mancuses.<sup>1</sup> And if he dare not, let him pay for it threefold, as it may be valued.

<sup>1</sup> A money of account of this time representing thirty pence.

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4. And that every man know his warrantor in acquiring slaves and horses and oxen.

5. And we all ordained on that day that the oaths were sworn, that neither bond nor free might go to  
5 the host without leave, no more than any of them to us. But if it happen that from necessity any of them will have traffic with us or we with them, with cattle and with goods, that is to be allowed in this  
wise: that hostages be given in pledge of peace,  
10 and as evidence whereby it may be known that the party has a clean back.

## PROBLEM II

### II.—Origin of the Jury



# Origin of the Jury

## 1. THE HISTORICAL SETTING OF THE PROBLEM

IT has been remarked more than once that the narrow strip of water which separates England from the Continent, while it has been a safeguard against sudden invasion, has been no barrier to institutions and ideas. Even before the Norman Conquest much that was Frankish and ultimately Roman passed into England. Besides Christianity and the host of conceptions, social and political as well as religious, which it bore, there were such well-known importations as the ideas of written, central-made law, of a king who was more than a war chief, of centralized government in general. But of specific political practices or devices the importations had been very few. These came with the Norman Conquest, and prominent among them—prominent at the time, but absolutely pre-eminent if what was to grow out of it be taken into consideration—was the sworn inquest.

Although Normandy was a new state, founded in 911 by the Scandinavian conquerors of the region, it had by 1066, as one of the family of north French feudal principalities, become as Frankish as any and a distinct leader among them. Even its third duke, Richard the Fearless (943-996), has become known as the last of the Scandinavian and the first of the French dukes of Normandy. Intermarriage was wiping out race antagonism

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while furnishing a very virile and versatile new strain; and that selective assimilation—the Northmen's chief glory—by which the better things in their new environment were taken into their life and practice, laid the foundations of future greatness. Normandy was an ideal transmitter into England of things continental.

It may be stated at the outset that the development which was to make the sworn inquest a notable thing in the world's history took place in England and not on the Continent. One obvious but fundamental reason for this needs a brief discussion before the sources are studied. The sworn-inquest seed found a favorable soil in England. It was sown in a country where there was a fairly large class of men which was at the same time responsible, well-informed, and honest. The three qualities of responsibility, informedness, and honesty were perhaps as frequent in isolation on the Continent as in England. Be that as it may, it was the combination which was needed. A nobility, while certainly responsible and sometimes truth-telling, would not have a wide range of information on local affairs. A servile peasantry, while as honest as the nobles and well-informed on the more local and petty affairs, would lack the goods and chattels on the basis of which a man could be conveniently held answerable for perjury. In men between nobles and serfs, the three qualities were more often combined. And England, in the centuries following the Norman Conquest, had more such men. England had a middle class.

This is not the place for a discussion of English classes or an explanation of their origin, but a few leading facts need emphasis. ( In the twelfth and thirteenth centuries, the critical period in jury development, there was in England a substantial body of men above the villeins and below the nobles. These non-noble freemen were both



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urban and rural. In the boroughs they constituted the bulk of the population, and held their real estate by bur-  
gage tenure. Outside the boroughs, they were on the  
manors throughout England (sometimes themselves lords  
of manors), not nearly so numerous as the villeins, but  
always an important element in the population. Their  
tenure of land was by free socage, the ancestor of the  
modern fee simple. This middle class, both rural and ur-  
ban, had important public duties and obligations. The ob-  
ligation of the citizen to the state had been largely theirs.  
This obligation had two manifestations which ran back  
to time immemorial. (There was the duty of attending  
the courts, + hundred and shire courts or borough courts.  
For these courts were assemblies of the people in which  
there were presiding officers, but no judges apart from the  
assembly itself; and upon the assembly rested the con-  
duct of the trial and the finding of the judgments. The  
other obligation was to defend the state in the citizen  
army or militia. And when, in the eleventh and twelfth  
centuries, the Danegeld became a true tax, and when at  
the end of the twelfth and in the thirteenth century the  
Danegeld was replaced by the more developed carucage  
and taxes on movables, the class of non-noble freemen  
bore an important share of the burden. It was a class,  
then, that stood face to face with the state and did not,  
like the villeins, bear its burden in some indirect and ser-  
vile way through landlords, nor did it escape some bur-  
dens and become charged with others in a special and  
personal way like the nobles.

But the most striking fact about English classes in the  
middle ages and the one most frequently remarked upon  
is the split which took place in the nobility. The lower  
nobles, the knights, parted company in most respects  
with the greater barons and approached the class below.

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The kings were so strong in England after the Conquest that warfare among the feudal nobles was seldom possible; also the whole body of knights was less and less frequently summoned to service abroad. Service in the king's court and central assemblies was not enforced upon the lesser tenants-in-chief, most of whom were knights. The knights, then, were not doing much in a military or political way to distinguish them from the class of freeholders. They stayed at home, ran their estates profitably, intermarried to some extent with the freeholders, and became familiar with all sorts of county business. Judged by continental standards, they were leading an unknighly life. When matters hardened in the later middle ages, it is found that the knights, the English gentry, had not the slightest legal or political right to distinguish them from the non-noble freemen. The distinction was social. Thus England's middle class virtually included all between a very small group of great barons (later the peers of the House of Lords) and the villeins. It was in this great group that men available for sworn-inquest purposes were oftenest found. And the government was not slow to learn that in the knights responsibility, honesty, and information were oftenest found together.<sup>1</sup>

All this assumes that there was a central government strong enough to use the middle classes for its own purposes and intelligent enough to develop this use in an orderly and progressive way. The big part played by the Conquest itself in giving the central government a unique opportunity in England and the strength and in-

<sup>1</sup> Of course if the king needed information which could best be gotten from either great nobles or villeins, he was as ready to use the sworn inquest with them as with the middle class; but for the routine kinds of local business knights or freeholders served best.

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telligence of the post-Conquest kings need little insistence. Ninety-one years out of roughly the first century and a quarter after 1066, England was ruled by a William I., a Henry I., and a Henry II.; and the centennial year of the Conquest brought forth the Assize of Clarendon. Though there was a falling off in the quality of kings during the next century, enough had been done. A standard had been set, traditions had been established, ministers had been trained. No more impressive proof of Henry II.'s greatness can be desired than to watch generation after generation of ministers perpetuating his ideals and methods under the politically incompetent or abusive Richard I., John, and Henry III., and to see how his great ordinances laid the foundation of the courts and the common law. So, if the English middle class was a good tool, there was a firm, clever hand to use it.

### II. INTRODUCTIONS TO THE SOURCES

#### 1. The Monastery of St. Vincent *versus* Certain Serfs of the Monastery.

This record of litigation is taken from the *Chronicon Vulturense* or Chronicle of Volturmo. This work was compiled late in the eleventh century, at the famous Italian monastery of St. Vincent in the province of Capua, by John, a monk of that house. He began with the eighth century and brought the record down to his own time. In 1108 he presented his work to Pope Paschal II. The *Chronicle* is for the most part a collection of documents relating to the monastery's history, and in so far is of value; but its slight narrative portion, which deals mainly with the early, mythical period of the house, is valueless. The document here selected is from the ninth century,

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and is the record of a very significant bit of litigation to which the monastery of St. Vincent was a successful party. It is not hard to identify the several Frankish rulers mentioned, and it is suggested that this should be done at the outset with the aid of a genealogical table. It is interesting in this connection to notice where the monastery of St. Vincent was located.

2 and 4. The writs relating to the "Abbot of St. Augustine's Claim to a Ship" and the same abbot's "Claim to Customs at Newington" are from Thomas of Elmham's *Historia Monasterii S. Augustini Cantuariensis* (History of the Monastery of St. Augustine of Canterbury). This compilation was made in 1414, the author being a monk of St. Augustine's. "The portion of the work actually completed covers the years 597-806, while the rest of the volume is made up of rough materials for the projected continuation of the history, such as charters and bulls (many of them spurious) relating to the abbey, from about 1066 to 1191."<sup>1</sup> There is no reason to doubt the authenticity of the writs cited in connection with the present problem.

3. The "Title of the Domesday Inquest for Ely" is a typical set of instructions to the commissioners employed on the great Domesday Survey. The originality and initiative of the Conqueror in undertaking this detailed and unprecedented census, his driving-power in carrying it through in a few months, and the resulting mass of unique but difficult material left to the historian are the phases of the survey usually commented upon at length. In the present connection a different interest is uppermost—viz., the method employed in obtaining the data. Not what was done, but exactly how it was done must be learned here; and an intensive study of the Ely instruc-

<sup>1</sup> Gross, *Sources and Literature of English History*, p. 184.

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tions will yield all the necessary information on this point.

5. The record of the litigation of the "Monks of St. Stephen *versus* the King's Tenants" was first printed, from the Chartulary (record-book of the property of a monastery) of the monastery of St. Stephen's at Caen in Normandy, in Palgrave's *English Commonwealth*, II, 183. The manor of Bridton, with appurtenances, had been granted to the abbey by William the Conqueror. Notice the make-up and location of the court which finally determined the case; also by what authority it was held and who presided over it.

6. This "Writ of the Earl of Essex in Favor of the Canons of St. Martin" was printed from the original (preserved in the Abbey Church at Westminster) by Madox in his *History and Antiquities of the Exchequer* (quarto edition) I, 108. Madox placed it "in or about the reign of King Henry I. or Stephen." Bigelow remarks, "If this was the second Geoffrey earl of Essex, as appears to be the case, the writ was of the reign of Stephen; for that king raised him to the position." This was, then, doubtless, the notorious Geoffrey de Mandeville whom Round (in his *Geoffrey de Mandeville: A Study of the Anarchy*) calls "the most perfect and typical presentment of the feudal and anarchic spirit that stamps the reign of Stephen." In the present case Earl Geoffrey is seen in a moment of penitence superinduced by illness; yet this very writ bears some evidence of his lofty pretensions.

7. The Constitutions of Clarendon, too well-known a document to need much introduction, was a product of the famous controversy between Henry II. and Archbishop Thomas. The king believed the points at issue should be settled by an appeal to precedent. The time of his grandfather, before the anarchic days of Stephen

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when the church, like every other element, had gained so many privileges at the crown's expense, was to him the normal and just period; and the men who were questioned on the former relations of church and state must be old enough to remember well the days of Henry I. That the Constitutions of Clarendon were based on information gained by an inquest can be clearly seen by an analysis of the preamble. The articles, of course, cover the vital points in the great controversy; but besides these Henry seems to have taken the opportunity to clear up several related matters of doubt and difficulty between church and state, and in one or two instances there is outright innovation instead of the statement of old custom. The document relates largely to judicial matters, as was bound to be the case in view of its occasion.

8. The Assize of Clarendon was a set of instructions or the commission given to the itinerant justices about to go on circuit. But while this was its formal and immediate character, it turned out to be constructive legislation on a lofty scale—the supreme example, perhaps, of the informal and unconscious legislation of that great reign when the corner-stone of the *common law* was laid.

. . . a few written or even spoken words communicated to his [Henry II.'s] justices, whom he was constantly sending to perambulate the country, might do great things, might institute new methods of procedure, might bring new classes of men and things within the cognizance of the royal court. Some of his ordinances—or "Assizes," as they were called—have come down to us; others we have lost. No one was at any great pains to preserve their text, because they were regarded, not as new laws, but as mere temporary instructions which might be easily altered. They soon sink into the mass of unenacted common law.<sup>1</sup>

<sup>1</sup> Maitland, in Traill's *Social England*, II, 408.

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It is a most curious fact that only the few specialists in this field knew of the Assize of Clarendon or several other documents of the time not much below it in importance until, about 1870, these documents were first taught to undergraduates at Oxford out of Stubbs's *Select Charters*, that revered and noble ancestor of source books.

9. The Assize of Northampton was a revision of the Assize of Clarendon made just ten years later. Again itinerant justices were to be sent through the country and for much the same business. The second document shows that the methods of dealing with criminals which Henry had made a part of his court procedure by the Assize of Clarendon had succeeded. It is interesting to compare the documents and see the changes in detail which a decade of experience had suggested. It is an inspiration to watch the first steps in this great experiment which was to revolutionize criminal procedure and which, with all its early crudities and barbarous accompaniments, was one of the long steps forward in government and civilization. In the sphere of civil pleas, the Assize of Northampton has something new to show us.

10. *Tractatus de Legibus et Consuetudinibus Regni Angliæ*. [Ascribed to Ranulf de Glanville.]

"Glanville aided Henry II. in his military operations against the Scots and the Welsh, and was chief justiciar of England from 1180-1189. The *Tractatus de Legibus* is usually ascribed to him, but there is no good evidence to show that he wrote it. It may have been written by his nephew, Hubert Walter. The work was compiled near the end of Henry II.'s reign, 1187-89. It is the oldest of the legal classics of England, and marks a distinct advance over the unsystematic law-books of Henry I.'s time. 'With the exception of the *Decretum*, it was the earliest systematic treatise that appeared after the dis-

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solution of the Roman Empire.' The author's primary object is to describe the procedure of the king's court, but he also throws much light upon other legal institutions. 'Glanville, who led the way,' says Reeves, 'is still entitled to the veneration always due to those who open the paths to science.' His work helped to make law and practice more uniform throughout England along the lines marked out by Henry II."<sup>1</sup>

11. These "Typical Civil Pleas" are records of civil suits taken from the so-called Plea Rolls of the king's court. It is believed that it was in the reign of Henry II.—the reign pre-eminent for great beginnings in law and procedure—that the first written records were kept of cases heard in the king's court; but none of these has come down to us. However, many Plea Rolls are extant for Richard I.'s reign, and very many more for the reign of John and the reigns following. "When once the stream of Plea Rolls begins to flow, it flows abundantly," says Maitland. "If the judicial records of the thirteenth century were printed in a hundred volumes, those volumes would be stout." And at that we have but a fraction of the rolls originally made. Records were kept of the cases tried before the central court of the king and also of those tried in the localities before the king's court of the itinerant justices. The first three cases here cited were tried at the center, brought up, it will be observed, from Surrey, Northampton, and Kent; the two following were from the Cornish eyre; and the last three from the Lincolnshire eyre. The actions here illustrated (the *grand assize* and the three possessory assizes) are those in connection with which, back in the reign of Henry II., the jury was first made a regular part of the procedure in civil suits. By the first part of John's reign these assizes

<sup>1</sup> Gross, *Sources and Literature*, pp. 315-316.



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had become very numerous, and were working powerfully to spread jury trial into all the more important civil actions. Of the cases here shown, *a* and *f* are the *grand assize*; *d* and *h* the *novel disseisin*; *c*, *e*, and *g* the *mort d'ancestor*; *b* the *darrein presentment*. The essential features of these actions should be studied in this connection from some manual of English constitutional history.

12. The "Typical Pleas of the Crown" are records of criminal cases taken from the same kind of Plea Rolls just described. Those printed here were all brought before itinerant justices early in the reign of John, and the circuit, or eyre, is indicated in each case. The number of "crown pleas"—that is, important criminal cases brought before the king's court—was small in comparison with the civil pleas; hence it is much harder to deduce what might be regarded as the normal procedure of any given time. It is evident that all criminal procedure was distinctly ineffectual. Convictions were rare.

13. These last "Typical Pleas of the Crown" belong to the next reign and are all from the Gloucestershire eyre. In the interval between these and the previous group a very important event in the history of criminal procedure had occurred. Under the influence of the great Pope Innocent III., the Fourth Lateran Council, which met in 1215, passed a decree forbidding the clergy to participate in the ceremonies attendant upon any of the ordeals. As all the ordeals except trial by battle were managed by the clergy, this meant abolishing all but this one ordeal in those countries in which the decree was obeyed. It is not hard to account for the ready obedience of England at this time.

### III. QUESTIONS AND SUGGESTIONS FOR STUDY

1. What was the principal method used to obtain the facts in the trial recorded in document 1? Give an account

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of this method, making it as clear and detailed as the document allows. By whose authority was it used? What was it called? Who rendered the judgment in the case? On what was the judgment founded?

2. What features of this method of getting information are to be found in the documents from the reigns of William I. to Stephen (incl.)? What different features do you note? Are there any which seem stable or nearly so throughout? Would you regard the method illustrated in these English documents substantially the same as that in the Frankish?
3. As far as these documents show, was the sworn inquest generally used in connection with a trial in court? (Examine also the early documents in Problem III.)
4. Enumerate the classes of men that were used on sworn inquests in the English cases down to Henry II.
5. In which of the instances here shown was the sworn inquest used on the most extensive scale?
6. Find a case in which the inquest seems to have been used on some other authority than the king's. Can you account for this?
7. Enumerate carefully the different uses of the inquest in Henry II.'s reign. (See also documents from this reign in Problem III.) About which of these does there seem to be anything distinctly new? Do any of them seem at all like modern juries?
8. In what civil suits were juries used in Henry II.'s reign?
9. Name the common civil suits in which there was jury trial early in John's reign. Of which of these do you find traces in Henry II.'s reign?
10. Find proof in Magna Carta (see Appendix, pp. 000-000) that some of these civil actions were very popular. Have you any means of knowing whether jury trial popularized them or whether they popularized jury trial?
11. Did these juries make their statements as units or were their members questioned individually?
12. What was the relation of the jury's statement to the judgment in these cases?

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13. Was the jury's statement ever called in question?
14. Would it be correct to call these jury statements verdicts?
15. Does there seem to have been one or more than one method of selecting juries?
16. In which documents of Henry II.'s reign are to be found juries which presented suspected criminals for trial? What classes of criminals? Was there any change in this last respect during the reign?
17. Which document seems to have established a presenting jury as a regular part of the king's court procedure?
18. What men served on the presenting juries? Was there any change in this respect during Henry II.'s reign?
19. What modern form of jury is essentially the same as this presenting jury?
20. In connection with the earliest instances of the presenting jury here shown, is there any hint of the king's reason for adopting it?
21. Did juries present those who had been previously accused by the injured parties? Did they present people who had never been accused?
22. What evidence is there to show whether or not all trials for the most serious crimes were now begun by a jury indictment?
23. How were the people thus presented tried in Henry II.'s or John's reign? What document prescribed this prevailing method? Do you know whether or not other forms of trial were used for such cases in times past?
24. What evidence is there that Henry II. was dissatisfied with the way in which criminals were tried? Is there any indication of the method he would have liked to substitute?
25. How were criminals tried in Henry III.'s reign? How do you account for the change?
26. What happened if a man refused to allow his guilt or innocence to be determined in this way? Can you suggest why he was allowed any option in the matter?
27. What evidence is there of two distinct juries in these later cases?

## IV. The Sources

1. *The Monastery of St. Vincent versus Certain Serfs of the Monastery.* 854. (Latin text in Muratori, *Rerum Italicarum Scriptores*, Vol. I, pt. 2, pp. 398-9. Translation by the editor.)

5 In the name of Christ the Omnipotent. By order of the most pious lord Lewis Augustus, son of the Emperor Lothair, and also of our lord Duke Guy, we Franfid the Prefect sat in judgment in the vill Trita, which was formerly under the Prefect Audoen,  
10 in the cause of the serfs of the vill Offen of the Tritan valley in the Balvensian district, whom the Cell Trita of the Monastery of St. Vincent sought to reclaim as serfs; and these were present with us. [*Here follow thirteen names.*] So coming into the  
15 presence of us the above-named judge, Gunipert reeve of the Cell Trita of the Monastery of St. Vincent, together with the clerk Adelpert his advocate, laid claim before us to the men of the vill Offen [*here are inserted the names of nine men*], saying that  
20 although these men had always been serfs of St. Vincent, they had now for cause unknown withdrawn themselves from that service. But on their part

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the said men made answer: "It is not true that either we or our fathers have been serfs of St. Vincent as Gunipert the reeve and Adelpert claim, because both we and our fathers have always been free  
5 men; for the sake of protection we commended ourselves to that monastery as free men, not as serfs." To these statements Gunipert the reeve with Adelpert his advocate replied: "Indeed we have the written authorization which Lewis the prior had from  
10 the grandfather of our most pious lord Lewis Augustus, and also another order by which this Lewis, son of the lord Emperor Lothair, has confirmed the grant made by his grandfather to this monastery; and in order that the monastic side may at least  
15 have the benefit of witnesses, an inquisition ought to be held on this case as by royal authority. Therefore, if it please you, make an inquisition on this matter, as the lord Emperor commands and authorizes, to determine whether these men  
20 were free men in that monastery or serfs." Then we Franfid the Prefect, together with the above-named judges, saw this cause of disagreement between the parties, for these men of the vill Offen declared that they were free men and had become  
25 connected with that monastery for protection only and not as serfs; therefore we summoned from neighboring parts of the Tritan valley and Carapella and also from several other vills good and true men who were well acquainted with this case and knew the

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men.] And we made them take oath on the holy Gospels of God that they would tell us the absolute truth of whatever they knew about these men of Offen, their freedom or their serfdom. [Here follow  
5 the names of the eighteen who took oath.] And after the oath was taken we each one of us carefully questioned them individually. Their statements to us were of one tenor: "As far back as our memories serve we know how this Ursepert, himself a serf,  
10 has been reeve over the other serfs of St. Vincent of Offen, likewise also all his connections have as serfs suffered the same limitations; moreover the reeves who have been in this Cell we have always seen treated as serfs until now. And if the aforesaid  
15 men or those related to them committed any crime they were put in chains and treated as serfs, and we have seen nothing of their freedom hitherto." Moreover, we questioned Ansfrid, who was formerly prefect, also Gifo and Alaisi the *echevins*, by that  
20 oath or fidelity which they had rendered to the lord Emperor that they would state truly before us whatever they knew of the said serfs or their connections. These made one reply to us: "By that oath or fidelity which we have rendered to the lord Em-  
25 peror, as far as our memory serves, we have seen this Ursepert, John, Johannaci, etc. always, both them and theirs, serfs of St. Vincent; and all those things are true which the aforementioned men have sworn." And when we Franfid the Prefect and the

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said judges had, through these documents and inquisitions, found all things thus, we respited the case until our lord Duke Guy again commanded that as by order and authority of lord Lewis the Emperor, 5 as also by his own order and command, I Franfid the Prefect should conclude this case between these monks and these men of the vill Offen on the basis of the inquisition which was held before us, and that the monks should return the said men and their 10 connections to their service as serfs. And so it was done. Hence, for the security of said monastery, we Franfid the Prefect and the said judges have bidden Fraupert the notary to record the present judgment together with all that has been done and 15 considered throughout the litigation. And it was done in the thirty-second year of the reign of our lord the Emperor Lothair and the fifth of his most pious son Lewis Augustus, in the month of February, the second Indiction. Witnesses:

20 I Franfid the Prefect was there  
I Gifo was there  
I Senoald was there  
I Alagisi was there  
I Adelpert was there  
25 I John was there, etc.

2. *Abbot of St. Augustine's Claim to a Ship.* (Reign of William I. Latin text, Bigelow, *Placita*, p.

33. Translation by the editor.)

William son of the king to William sheriff of Kent,

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greeting. I command that you order Hamo, son of Vitalis, and the good neighbors of Sandwich, whom Hamo has named, that they tell the truth about the ship of the abbot of St. Augustine; and  
5 if that ship traversed the sea on the day when the king last crossed the sea, then I command that it now remain afloat until the king shall come into England, and in the mean time let the said abbot be again in possession of it. Witness the bishop of  
10 Salisbury and the chancellor, at Woodstock.

*[Writ of execution of above on judgment.]*

William son of the king to William sheriff of Kent, greeting. I command that you put the abbot of St. Augustine again in possession of his ship,  
15 as I commanded you by my other writ, and as it was declared by good men of the county that the abbot was in possession of it on the day when the king last crossed the sea; and let him hold it in peace. Witness the chancellor, at Windsor. And  
20 this without delay, lest I hear further complaint about it. Witness the same.

3. *Title of the Domesday Inquest for Ely.* 1086.

(Latin text, Stubbs, *Select Charters*, ninth edition, p. 101. Translation by the editor.)

25 Here is written below the inquisition of lands how the barons of the king make inquiry, namely, on the oath of the (sheriff of the shire and of all the barons and their Frenchmen and of the whole hundred, of the priest, of the reeve, of six villeins of each vill.)



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Then how the manor is called; who held it in the time of King Edward; who holds it now; how many hides; how many ploughs in demense and how many of the men; how many villeins; how many cotars; 5 how many serfs; how many freemen; how many sokemen; how much forest; how much meadow; how much pasture; how many mills; how many fish-ponds; how much has been added to it or taken from it; how much it used to be worth alto- 10 gether; and how much now; how much each free-man or sokeman had there, or has. All this thrice; that is to say, in the time of King Edward, and when King William gave it, and how it is now; and whether more can be had than is had.

- 15 4. *Claim of Abbot of St. Augustine to Customs at Newington.* 1094. (Latin text, Bigelow, *Placita*, p. 66. Translation by the editor.)

William son of King William to the sheriff of Kent, greeting. Cause to be declared by the men 20 of the hundred of Middleton what customs the abbot of St. Augustine ought to have in the vill of Newington, and what he formerly had. And make him to have such without delay, and particularly concerning that aid as he formerly had it. Witness the bish- 25 op of Salisbury, at Westminster.

5. *Monks of St. Stephen versus the King's Tenants.* 1122. (Latin text, Bigelow, *Placita*, pp. 120-121. Translation by the editor.)

In the year one thousand one hundred and twenty-

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two from the incarnation of our Lord. Henry king of the English commanded that the complaint of the monks of St. Stephen of Caen, which they were making about the land which pertains to Bridton which  
5 the king's men of Bridport seized and have long held in possession by the help of the king's ministers, be considered under examination of judges; so that indeed an end of the whole question be reached through a statement of the (men of the four quarters  
10 of the neighborhood of that vill.) Which often postponed, the king's command at length insisted should be done. A day, therefore, having been set, the claim of the monks was heard before seven hundreds which convened upon that same land, from neigh-  
15 boring and distant vills, Warine the sheriff of Dorset and Somerset being present, upon whom the conduct of this case was specially enjoined; and the oath was taken according to the king's decree. For sixteen men, three namely of Bridport and three of  
20 Bridton and ten from neighboring places, swore that they would make a true statement in the inquisition concerning that land. The inquisition having been made as to whose it more justly was, these men affirmed on the faith of their oath that the said land of  
25 old pertained to Bridton. And whosoever Bridton was, his that land ought to be. All acquiescing in their assertion, by God's grace and the merit of St. Stephen, their rights were adjudged to the demandants, and that the land should be restored to Brid-

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ton, and therefore handed over to the monks. And so it was done on that same day. . . . . The names of those who swore are these. x . . . . .

6. *Writ of the Earl of Essex in favor of the Canons of St. Martin.* (Reign of Stephen. Latin text, Bigelow, *Placita*, p. 160. Translation by the editor.)

Geoffrey Earl of Essex to Aelard de Werris, greeting. I command you that, setting aside every excuse and delay, and as you love my body and soul, you restore to the canons of St. Martin of London all their grain of Godchester, and all their goods which my men have taken thence; and let all their men and goods have my firm peace henceforth; because on account of my illness and for the salvation of my soul, I have promised to satisfy those canons and all the churches of God. And let it be declared by the neighborhood and by good men of that district whether five acres of land, which Walter Long holds and of which he dispossessed them and which those canons claim, be of their tenure; and if it shall be so declared, cause them to be put in possession, and let them hold the land well and in peace.

7. *Constitutions of Clarendon.* 1164. (Latin text, Stubbs, *Select Charters*, ninth edition, pp. 163-167. Translation by the editor.)

[See Appendix, pp. 370-375, for the entire document. In connection with the present problem, study especially articles 6 and 9.]

## Source Problems in English History

8. *The Assize of Clarendon*. 1166. (Latin text, Stubbs, *Select Charters*, ninth edition, pp. 170-173. Translation by the editor.)

[See Appendix, pp. 375-380, for the entire document. In connection with the present problem, study especially articles 1, 2, 5, 8, 14, and 22.]

9. *Articles from the Assize of Northampton*. 1176. (Latin text, Stubbs, *Select Charters*, ninth edition, pp. 179-181. Translation by the editor.)

10 1. If any one shall be charged before the justices of the lord king with murder or theft or robbery, or with the reception of men doing such things, or with falsifying<sup>1</sup> or arson, by the oath of twelve knights of the hundred, and if knights are not present, by  
15 the oath of twelve free, legal<sup>2</sup> men, and by the oath of four men of each vill of the hundred, let him go to the judgment of water, and if he fail let him lose one foot. And at Northampton it was added for rigor of justice that likewise he lose his right hand  
20 with his foot, and that he abjure the kingdom, and that he leave the kingdom within forty days. And

<sup>1</sup> Probably the *generale crimen falsi* referred to by Glanville, Bk. xiv, ch. 7, where it is taken up in connection with the other crimes mentioned in the present category. Glanville says that this general  
25 crime of falsifying has several specific forms, as falsifying charters, measures, money, etc. Ducange limits the *falsoneria* of the Assize of Northampton to counterfeiting money and cites the present passage in illustration, while Maitland (*History of English Law*, I, 152) translates it "forgery."

30 <sup>2</sup> The word translated "legal" or "lawful" in this and similar connections indicates men whose oaths were presumably good; that is, men who had never been found perjurers.

## Origin of the Jury

if he has been cleared at the water, let him find pledges and remain in the kingdom, unless he has been charged with murder or other heinous crime by the community of the county and of the legal knights of the locality, with which, if he has been charged in the aforesaid way, although he has been safe at the water, nevertheless within forty days let him leave the kingdom, and let him take his chattels with him, saving the right of his lords, and let him abjure the kingdom at the mercy of the lord king.

. . . . .

4. Also if any freeholder dies let his heirs remain in such seisin as their father had of his fief on the day of his death; and let them have his chattels, whence they may satisfy the will of the deceased; and afterward let them seek their lord and from their fief let them pay him relief and do the other things which they ought to do for him. And if there be an heir under age, let the lord of the fief receive his homage and have him in wardship as long as he should. And let the other lords, if there be several, receive his homage, and let him do for them what he ought to do. And let the wife of the deceased have her dowry and the portion of his chattels which pertains to her. And if the lord of the fief refuse the deceased's heirs the seisin of the said deceased which they ask, let the justices of the lord king cause

## Source Problems in English History

a recognition to be made by twelve legal men as to what seisin the deceased had of it on the day of his death; and according to the recognition, let them make restitution to the heirs. And if any one do  
5 contrary to this and be convicted of it, let him remain at the king's mercy.

5. And the justices of the lord king shall cause inquest to be made concerning disseisins committed contrary to the Assize since the lord king came into  
10 England next after the conclusion of peace between him and the king his son.

X

10. *Tractatus de Legibus et Consuetudinibus Regni Angliæ*. (Reign of Henry II. Latin text in Stubbs, *Select Charters*, ninth edition, pp. 190-

15 191. Translation by the editor.)

Bk. i. 5. When any one makes complaint to the lord king concerning his fief or his free tenement, if it be a complaint such as ought to be brought to his court or one which the king wishes to have  
20 brought there, then the demandant shall have the following writ of summons:

6. The king to the sheriff greeting. Command A that without delay he restore to B one hide of land in such a vill concerning which said B com-  
25 plains that said A is deforcing him: and unless he shall do this summon him by good summoners, that he be before me or my justices on the morrow after

## Origin of the Jury

the octave of Easter to show why he has not done it. And have there the summoners and this writ.

/ Bk. ii. 7. This Assize<sup>1</sup> is a kind of royal benefit, granted to the people through the kindness of the prince on the advice of the great men, by means of which men's lives and the integrity of their status are so helpfully taken into consideration that in maintaining the right which they possess in free tenement of land, men are able to avoid the doubtful outcome of trial by battle. And thus it happens that one can escape the extreme sacrifice of an unexpected and premature death, or, if not that, the stain of eternal disgrace resulting from that hateful and untrue word which sounds so shamefully in the mouth of the conquered. This legal enactment is truly the product of the highest equity; for the ends of justice which, after many and long delays, it is hardly possible to attain by wager of battle, are reached both more conveniently and more quickly by these means.

[The method of choosing the jury in the Grand Assize].

10. By such writs the tenant asks for peace and places himself upon the Assize, until his adversary, coming to the court, seeks another writ, which re-

<sup>1</sup> Refers to the Grand Assize, of which the writer has just been speaking.

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quires that, by four legal knights of the county and neighborhood, there be elected twelve legal knights of the same neighborhood, who shall state upon oath which of the litigants has the greater right in the land in question.

11. *Typical Civil Pleas before the Justices of the Bench and before the Justices in Eyre.* 1200-1202. (Nos. 17, 70, 107, 197, 207, 212, 216, 239 in *Select Civil Pleas*, edited for the Selden Society by W. P. Baildon. Latin originals and translations.)

10 Surrey. a. Theobald de Ferring demands two hides of land with appurtenances in Battersea and Wandsworth against Richard de Dol' as his right and inheritance; whereof Augod, his father, was seised as of fee and right the day and year in which King Henry the grandfather died, taking issues to the value of five shillings and more. Richard comes and defends<sup>1</sup> [Theobald's] right; and puts himself on the Grand Assize which of them has the greater right in the land. A day is given them in the advent of the justices, etc.; and let four knights then come to elect twelve.

2 Northampton. b. The Assize comes to recognize what patron in the time of peace presented the last parson to the church of Woodford, which parson is dead; the advowson<sup>2</sup> of which [church] Ralph Bas-

<sup>1</sup> In the sense of *denies*.

<sup>2</sup> The right to appoint the parson.



## Origin of the Jury

set demands against the Abbot of Rochester. [The Abbot] comes and says that the church [of Woodford] is not vacant, because his church [of Rochester] has had it and possessed it for thirty years and more, of the gift of Osmund Basset and William Basset.

And the Abbot shows their charters; one whereof testifies that Osmund Basset gave the church [of Woodford] to the church of Rochester in pure [and perpetual alms];<sup>1</sup> and the other testifies that William conceded it to them as Osmund's gift. So that Richard de Buckton, who last died, was perpetual vicar of that church [Woodford], rendering to [the Abbot's] church [of Rochester] two marks yearly. And against this Ralph says that he, after the obtaining of the said charters, presented the said Richard to that church [Woodford], and thereof he puts himself upon the jury. The jury say that Ralph presented the last parson; let him have a writ to the bishop to admit his clerk.

*most d'ance*  
10 / *Kent.* c. The Assize comes to recognize if Guy, the father of William and William, was seised in his demesne as of fee of two acres and a half of land with appurtenances in Abbeham the day that he died, and if he died [within the Assize],<sup>2</sup> which land James

15 <sup>1</sup> The tenure commonly known as *frankalmoin* or *free alms*. Much land was given to the church on this tenure, which carried with it large immunities from secular jurisdiction and service.

<sup>2</sup> That is, the arbitrary time limit within which this action could be used. It was always made recent enough to warrant the assumption that the jurors' memories could be relied upon.

## Source Problems in English History

de Fugelest holds. The jury say that Guy was so seised the day that he died, etc., and that William and William are the next heirs. Judgment: Let them have their seisin thereof, and James is in mercy for the unjust detention.

*d.* The Assize comes to recognize if Stephen de Poundstock has unjustly and without judgment dis-seised Jordan the Chaplain of his free tenement in Trekenna after the second coronation of King Richard.) The jury say that [Stephen] has so dis-seised [Jordan]. Judgment: Let Jordan have his seisin, and Stephen is in mercy. Damages, three marks; amercement, three marks.

*e.* The Assize comes to recognize if Elias, the uncle of Henry de Karville, was seised in his demesne as of fee of one virgate of land with appurtenances in Lovington, on the day that he died, etc., and if the same Henry is his next heir; which land Beatrix de Karville holds.) And [Beatrix] comes, and says that the Assize thereof ought not to proceed, because Philip, the brother of the said Elias, and the father of Henry, was seised of that land after the death of Elias; and she puts herself on the jury, and Henry similarly. The jury say that Philip was so seised after the death of Elias. Judgment: Let Beatrix hold in peace; and Henry is in mercy for a false claim.

*f.* Simon de Lyndon, Hugh Scot, William de Morton, and William son of Humphrey—four knights summoned to elect twelve to make the Grand Assize

## Origin of the Jury

between William de Owmbly and Adam de Bulby touching three carucates of land and one mill with appurtenances in Owmbly, whereof the said William [de Owmbly], who is the tenant, put himself on the  
5 Grand Assize of the king, and craved a recognition to be made which of them has the greater right in that land,—came and elected these:—Hugh de Bussei, William Pigot, Martin Martel, Alured de Haddington, William Chamberlain of Morton, William de  
10 Laude, William de Woodhall, Richard de Ottringham, Ralph de Healing, Robert son of Hamo, Robert Ribaut, John de Lalneto, Robert son of William de Legbourn, Peter de Kastellium, Peter de Neville, and Robert de Manby.

15 g. The Assize comes to recognize if Burius, the father of Hugh, was seised in his demesne as of fee of one bovat of land with appurtenances in Withern the day that he died, etc., which land Robert de Well holds. The jury say that Burius was so seised  
20 thereof, etc. Judgment: Let Hugh have his seisin, and Robert is in mercy for the unjust detention. Robert offers to the king forty shillings to have the oath of twenty-four knights to convict the jurors, because he says that Burius was only seised of half  
25 a bovat on the day he died. - 10.

h. The Assize comes to recognize if William son of Haldein has unjustly and without judgment dis-seised Hugh son of Richard of his free tenement in Wellingore after Michaelmas next [before the first

## Source Problems in English History

coronation of the king]. The jury say that [William] has not so disseised [Hugh], because [Hugh] never had any free tenement. Judgment: Let William hold; and Hugh is in mercy.

5 12. *Typical Pleas of the Crown before the Justices Itinerant*. 1201-1203. (Nos. 5, 6, 39, 56, 57, 66, and 68 in *Select Pleas of the Crown*, edited for the Selden Society by F. W. Maitland. Latin originals and translations.)

10 *Cornish Eyre*, 1201.

a. The jurors say that they suspect William Fishman of the death of Agnes of Chilleu, for the day before he had threatened her body and goods. And the four neighboring townships being sworn, suspect him of it. It is considered that he purge himself by water under the Assize.

b. William Burnell and Luke of the Well are suspected of burglary at the house of Richard Palmer by the jurors of the hundred, and by the four neighboring townships, which are sworn. Let them purge themselves by water under the Assize.

*Lincolnshire Eyre*, 1202.

c. Ranulf, son of Richard of Saxelby, <sup>accuses</sup> appeals<sup>1</sup> Alan, Aldane's son, for that he in the king's peace and wickedly slew [Ranulf's] father Richard, and this he offers to <sup>prove</sup> deraign,<sup>2</sup> etc., but he does not assert

<sup>1</sup> *Appeal* is here used in the sense of formally accusing any one of a crime.

<sup>2</sup> To prove in court by one of the regular methods.

## Origin of the Jury

that he saw the deed. And being asked how long has elapsed since his father was slain, he says eighteen years, but he was then within age and he made his appeal for the first time before Hugh Bardolf. And the twelve jurors being asked if they suspect Alan of the said death, say that they do not. And Alan comes and defends all of it, etc., and craves that it be allowed in his favor that the justices have been in the parts of Lincoln several times since Richard was slain, and [Ranulf] never made his appeal before them. It is considered that the appeal is null. So let Alan be quit. Ranulf in mercy. Pledges for the amercement, Robert of Owmbly and Simon of Saxby.

Bedfordshire Eyre, 1202.

d. Aubrey, wife of Peter Crawe, <sup>accused</sup> appealed Oliver and Roland, brothers of the parson of Cranfield, for that they wounded Peter her husband. And she has not prosecuted her appeal. And because Peter died, the jurors are asked whether he died of those wounds. They say that he did not die of those wounds. Let Oliver and Roland go quit thereof.

e. The house of a certain woman at Shelton was burgled by night. Robert Fale is suspected of this and other crimes by the jurors and the four neighboring townships. Let him purge himself by water. Staffordshire Eyre, 1203.

f. Andrew of Burwarton is suspected by the jurors of the death of one Hervey, for that he con-

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cealed himself because of that death. Therefore let him purge himself by ordeal of water.

g. Godith, formerly wife of Walter Palmer, appeals Richard of Stonall, for that he in the king's peace wickedly and by night with his force came to her house and bound her and her husband, and afterward slew the said Walter her husband; and this she offers to prove against him as wife of the slain as the court shall consider. And he defends all of it. And the jurors and the whole neighborhood suspect him of that death. And so it is considered that he purge himself by ordeal of iron, for he has elected to bear the iron.

13. *Typical Pleas of the Crown before the Justices Itinerant in Gloucestershire.* 1221. (Nos. 52, 213, 228, 229, 326, and 435 in *Pleas of the Crown for the County of Gloucester*, edited by F. W. Maitland. Latin originals. Translations by the editor.)

a. Marinus of Winchcomb, who was charged with the death of a certain man in the house of his father, gives two marks to have an inquisition as to whether or not he is guilty; Matthew Cook, Odo of Dumbleton, and Joseph de Marsh are accepted as pledges. The jurors of Winchcomb and of Kiftsgate and of Gretston say definitely that he is not guilty, and hence he is quit.<sup>1</sup>

<sup>1</sup> "The jurors of the borough of Winchcomb say that *Marinus* is accused of homicide; he pays two marks to have an inquisition as

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b. William de Fons and Alexander his son were suspected of the death of a certain merchant, who was lodged in the house of said William, and who was seen to be lodged there and who never came out  
5 alive; and they come and deny it all but refuse to put themselves upon their country.<sup>1</sup> The jurors say that Alexander and Agnes his mother killed said merchant, and carried him out, and had from him fifteen marks and a belt, and his [Alexander's] father  
10 was consenting; and the townships of Charlton, Leckhampton, and Ham say the same, and they well know that he was lodged there and that he was carried out dead. Let William be kept in gaol.  
Let him be committed to twelve legal men by order  
15 of the sheriff, and let the others remain in gaol.<sup>2</sup>

c. William Bot and Hugelot his son have been  
+ arrested on the indictment of twelve jurors because  
of their reception of John Bot, brother of said Will-

to his guilt or innocence: then the jurors of two neighboring hun-  
20 dreds are called in and all say distinctly that he is not guilty. He buys the privilege of being tried by twenty-four jurors in addition to the twelve who have presented the matter."—MAITLAND.

<sup>1</sup> That is, accept trial by jury.

<sup>2</sup> "This is the clearest case there is on this roll against trying, or  
25 rather against punishing, those who do not submit themselves to trial. Apparently *William, Alexander, and Agnes* have as full a trial as any accused person ever has. The jurors and the three townships declare them guilty; but Alexander and Agnes merely remain in gaol, while William is, I think, let out on bail, though this last fact  
30 is left somewhat obscure."—MAITLAND. Another manuscript recording this same case has for its last clause (referring to Alexander and Agnes), "And because they did not place themselves upon their country let them be kept in gaol."

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iam, a fugitive on account of sheep which he stole, and likewise because of their reception of a certain other thief who was hung, and also for other malefactions of which said jurors suspect said William and Hugelot. And they come before the justices and deny the reception and society of the thief, and their consent, and place themselves upon the verdict of the twelve jurors and upon their country for good or bad.

The jurors say definitely that said William received said John after that flight, and they well know that he was to have his share from the thefts of said John. They say also that he received Walter de Hedworth the thief who was hung after Roger Goman, father of said Walter, fled from him on account of the theft. And because Hugelot, son of said William, was living with him [William] and was of his household, the jurors say that he also was a party to that reception and the other malefactions. And the townships of Horsley, Woodchester, Rodmarton, and Tetbury say the same, and therefore it is considered that they be hung.

*d.* William of Lechlade was arrested upon the indictment of twelve jurors for the theft of some sheep that had been stolen. And he came before the justices and refused to put himself upon a jury. And they [the twelve jurors] say upon oath that they believe him to be the thief of sheep that were stolen at Bibury, but they do not know the names of those



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whose sheep they were; and the townships of Lechlade, Southrop, Hathrop, and Kempsford [say the same, and therefore let him be kept in custody].<sup>1</sup>

*e.* Malefactors came to the house of William de Hull of Elniton, and killed said William and carried off his goods; Reginald Cook and Geoffrey Bochan, arrested for that death, come before the justices and deny it all and put themselves on the verdict of twelve jurors and the townships. Who all come and say that they do not suspect them nor any particular man; and therefore let them go quit thereof.

*f.* Henry Piterich of Whaddon was held in the castle of the lord king at Gloucester for stolen sheep whereof he was accused; and afterward at the lord king's command by writ he was let out on bail until the coming of the justices; and then comes said Henry and denies the theft, etc.; but he does not wish to put himself upon the verdict of the twelve jurors, and therefore let him be kept in custody.

<sup>1</sup> These last words are found in a badly mutilated manuscript. "Seemingly another case, in which a man is tried and found guilty by the jurors and four townships, but is merely left in custody because he has not put himself on his country. It is to be noticed, however, that the jurors do not know to whom the sheep belonged. In this case it seems clear that the jurors, who say on their oath that they know William to be a thief, are the same jurors upon whose indictment he was captured."—MAITLAND.



## PROBLEM III

III.—Some Antecedents of the House of Commons



# Some Antecedents of the House of Commons

## I. THE HISTORICAL SETTING OF THE PROBLEM

THE same conditions in society and central government which brought forth the jury system brought forth also the House of Commons.<sup>1</sup> The beginnings of self-government were along these two lines. Judging of fact is doubtless the most important step in judicial procedure; and in England, by a striking and unprecedented combination of circumstances, this function, in the great civil and criminal cases, passed into the hands of representatives of the middle class. The circumstances which prepared the way for a central assembly of popularly elected representatives are equally interesting, and were surely as unaccompanied by any purposeful shaping in the direction of the final result.

Anglo-Saxon government had been characterized by the slightness of the connection between central and local institutions and the comparative unimportance of the former. The later kings felt that they should do more, and were conscious of many of the gaps and weak places.

<sup>1</sup>It is suggested that the student reread here the "Historical Setting" of Problem II.

## Source Problems in English History

But, for the most part, they were wanting in the necessary strength and resourcefulness; and the same futile methods were tried reign after reign. The perseverance and optimism of many of these sovereigns deserve commendation, but little else. Government was marking time. The sheriff, however, a purely royal official who did king's business in the shire, was one substantial achievement in the attempt to bring the king into more effective touch with the localities. It was a hint of the long process that, after the Norman Conquest, made the constitution.

The Conqueror saw possibilities in the sheriff and retained him. In succeeding reigns he was used as never before, and the strong kings kept him, great local landed proprietor as he usually was, from traveling too far on the tempting road to feudal independence. But the king's business was growing by leaps and bounds, and in Henry I.'s reign, partly to supplement the sheriff and partly to hold him in check, itinerant justices—the *missi dominici* of England—were developed. The anarchy of Stephen's reign interrupted all good beginnings, and, had it lasted longer, much might have been lost past recovery. Then came Henry II. (with whose reign the documents of this Problem begin), a king endowed, if ever king was, with just the right qualities to meet the governmental problems and opportunities of his time. It is always pleasant to think of the young sovereign, scarce twenty-one when he came to the throne, with his rare appreciative deference for the great past of his grandfather's reign, and perhaps already conscious of endless resources within himself.

Norman and Plantagenet rulers were learning much about local institutions and conditions—about hundred and shire courts, about tithing and frank-pledge, about

## Antecedents of the House of Commons

the boroughs, about freeholders and knights. They saw always more work to do, more information to be sought, new ways to develop their courts, to swell their revenue, to keep the country in peace. The work was so varied that all sorts of men, official and unofficial, might be employed. Some of it, indeed, could perhaps be better done by unofficial means; there were temporary and isolated jobs in plenty. And so in this turbulent time, when the crash of the Conquest had broken barriers and opened ways and England was making ready for her next great reach forward in civilization, these new relations between center and locality were big with possibilities. Knight and freeholder—the stuff out of which the House of Commons was made—had entered upon their apprenticeship in public service; and many principles and devices were being hammered out in the daily practice of local administration which had an unguessed future before them in the broader sphere of national polity.

### II. INTRODUCTIONS TO THE SOURCES

#### 1. Inquest of Sheriffs.

*Henry's  
against*

Henry's proceedings against his sheriffs is thus described in one of the chronicles of his reign:<sup>1</sup> "When the Easter festival was ended he [the king] proceeded to London, and there held a great council concerning the coronation of his elder son Henry, and also concerning the affairs of his kingdom; and there he removed almost all the sheriffs of England and their bailiffs, because they had treated badly the men of his kingdom. And all of the sheriffs and their bailiffs found pledges for themselves that they would stand to justice, and that they would restore to the lord king and the men of the kingdom what

<sup>1</sup>*Gesta Regis Henrici Secundi*, I, 4-5.

## Source Problems in English History

they ought to restore of the things they had taken. And afterwards the king caused all the men of his kingdom, that is to say earls, barons, knights, freeholders, and also villeins, throughout the several counties, to take oath on the holy gospels that they would tell the truth: namely, what and how much the sheriffs and their bailiffs had taken from them, what by a judgment and what without a judgment, and for what kind of misdeed. But great evil came thence to the people of England; because, after the inquisition had been made, the king put back some of those sheriffs into their places, and these were afterwards much more cruel than they had been before." This important proceeding took place in 1170, after the king had been out of the country for four years. These were the four years following the Assize of Clarendon. Large quantities of property had been confiscated as a result of the criminal proceedings instituted by that Assize, and the sheriffs were evidently under suspicion of having appropriated some of this to their own use; the recent heavy aid which had been levied on the occasion of the marriage of the king's eldest daughter also afforded opportunities to dishonest sheriffs; and it is clear that in very many ways the sheriffs had been growing corrupt and abusive. A thorough investigation of them and their subordinates, by the standard method of getting all local information, was determined on. But it is interesting to notice that, having gone so far, the king concluded that it would be a good time to make a general investigation of the whole local administration, private as well as public; and so the entire baronial system of courts and finance was included. Henry, who was so rapidly developing his own courts and who certainly had an eye to judicial income, was probably curious to find out how much the barons were realizing from theirs. It was to be a colossal

ed to know  
the Barons  
things from their courts



## Antecedents of the House of Commons

inquest, perhaps the most extensive since Domesday; and, as Stubbs has remarked, if the report was ever made it "must have been a record of the most interesting kind conceivable."

### 2. *Gesta Regis Henrici Secundi Benedicti Abbatis.*

This is perhaps the greatest chronicle from an age of specially able chronicle-writing. The group of historians more or less identified with Henry II.'s court represents some of the best thought and practice in historical method in the middle ages, and constituted one of the many high influences from that period felt for long afterward. This chronicle covers Henry II.'s reign from 1170 and also three years of the reign of Richard I.; the writing of it began about 1172 and was carried on in very strictly contemporaneous fashion. Its style is remarkably simple and direct, its material well chosen, and its accuracy and fairness of statement have been proved in so many instances that it inspires confidence throughout. It is known that it was not written by Benedict, abbot of Peterborough, whose name has long been identified with it.

In the passage cited, the choice of the bishop and abbots was to be made in the way that had been regular since the famous compromise between Henry I. and Anselm ~~the election took place in the king's presence~~ and the king's will was usually the predominant factor. But the king needed information and advice in regard to the available candidates, and used various ways to get it. The way shown here seems particularly effective and interesting.

3. The Assize of Arms, one of the great official acts of Henry II.'s reign, was a successful attempt to rehabilitate the ancient militia. The king was depending more and more upon mercenaries in his wars in France, and less

## Source Problems in English History

and less upon the feudal levy for defense in England. The association of knights and non-noble freemen, urban and rural, in this militia ordinance shows that feudal distinctions and practices already had little vitality in England, and is very significant for the future. It is another evidence that England's great and peculiar middle class was forming. The character of the arms purchased was to depend upon the amount of property which a man possessed, and article 9 is important in showing how information on this point was obtained.

### 4. Ordinance of the Saladin Tithe.

This is an illustration of a very important result of the later crusades, the development of new forms of taxation. Increasing attempts were made adequately to organize and finance these great expeditions, and necessity was the mother of many a new idea and device. The Saladin Tithe virtually introduced to England the taxation of revenue and movables; and taxation of this kind of property created a new problem in assessment. This ordinance was issued by Henry a few days after he and Philip of France had completed the preliminary arrangements for setting out on the third crusade.

### 5. Form of Proceeding on the Judicial Visitation.

This document was the commission given the justices who were sent out on circuit late in 1194. "The general business of the visitation," says Stubbs, "is of the usual mixed kind, judicial and financial, and should be compared with the Inquest of Sheriffs in 1170, as well as with the Assizes of 1166 and 1176." It should be remembered that much of this financial business closely touched the sheriffs, and the central power was here using the jury, not only on the great criminal and civil pleas which came before the justices in eyre, but also to learn the truth about local officials and administration. The coroners,

## Antecedents of the House of Commons

who are mentioned in the twentieth article, were a class of officials first appointed in Henry II.'s reign. This was the earliest of a long series of royal experiments in transferring a part of the sheriff's power and authority to a new officer. The very early coroners were local criminal justices who could try cases and impanel juries to make presentments. But soon their chief duty was to "keep the pleas of the crown." This meant that they held preliminary hearings and kept a record of local criminal matters for later use by sheriff or itinerant justice. It is clear that the king did not wish to have their selection in any way controlled by the sheriffs. It should be noticed from what classes of people they were drawn. (X)

### 6. Summons of Juries to St. Albans. (b)

This is a contemporary chronicler's transcript of a writ which is not itself extant. It therefore lacks the authority of an official document, but there is little reason to doubt that the transcript gives the substance of the writ itself. The king had just become reconciled with the church after their long quarrel. It was immediately incumbent upon him to make good, as far as possible, the damages and losses which he had for five years been inflicting on church property. This could best be done on the basis of an assessment by local juries acquainted with the details of the seizures and injuries. In 1208, when the first and greatest seizures of church property had been made, the confiscated property was intrusted to the keeping of men in neighboring vills, undoubtedly vills on the king's demesne. This accounts for the use of demesne-vill juries for the assessment of 1213. It may be added that the assessment was not carried out according to the plan of this writ. About two months later a series of local inquests was undertaken on the initiative of the church, and the king co-operated.

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### 7. Summons to a Great Council.

In this case the official text of the writ of summons has come down to us. Notice the different purposes for which the several elements were summoned. Whether or not the proposed assembly met and what was the business to be transacted are matters upon which there is no information. The autumn of 1213 was a time of much anxiety and activity on John's part. He was preparing for his last great effort to regain his lost lands in France and was hampered at every turn by the English barons whom he had alienated by years of abusive rule.

### 8. Magna Carta.

This most notable document in English history was based upon a list of articles (*Articuli Baronum*) presented to John by the army of victorious barons at Runnymede on Monday, June 15, 1215. These articles, which the king was forced to grant, were the result of a series of attempts, running through the spring of 1215, to draw up a comprehensive list of the points of abuse and misgovernment upon which the barons proposed to treat with him. During the four or five days following this eventful Monday, the articles were carefully reworded and expanded, and the whole document cast in the form of a permanent charter or grant of the king. This final form was no doubt due in large part to the coronation charter of Henry I., which figured prominently in some meetings of the barons where plans of action against the king were discussed.

### 9. Writ for Assembling the County Court before the Itinerant Justices.

This very inclusive county assembly was only held once in several years; it was the court summoned to meet the itinerant justices when they were sent out with one of their general commissions, and was much larger and

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more formal than the ordinary monthly county court of this time. "The justices who were sent out on such visitations had tremendous commissions; they not only tried all sorts of cases, but were still, as in the earlier time, collectors of revenue, and might be charged to attend to any kind of king's business. Henry III. got a great revenue by their means. They put local juries on oath for a great variety of purposes, their visitation being a prolonged inquiry into every matter that could possibly concern the king." It was this great variety and amount of business and the necessity for having on hand the materials for making up a jury for almost any purpose, administrative or judicial, that account for the very inclusive summons illustrated in this document.

### 10. Writ for the Collection of a Carucage.

The methods of assessing and collecting taxes varied much in detail during this period. But one element in them approached stability. This was the employment of local knights. The number, the method of choice, the precise way in which they were to conduct the assessment or were to co-operate with sheriff or royal commissioners changed from time to time and from tax to tax; but the knights usually bore the burden of work and responsibility. This royal writ for the carucage of 1220 furnishes as typical an instance as any, and its very emphatic account of some features of the procedure is interesting. The carucage was a land tax assessed on the "ploughland" or "plough." This measure of land approximated 100 acres, the amount which the regular plough team was supposed to work in a season.

### 11. Distrainment of Knighthood.

This is the first of a long series of attempts, known under the general term "distrainment of knighthood," to make all who had the property qualifications for knight-

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hood assume its name and insignia, and, what was of vastly more consequence, its burdens. Ten years later, a similar writ was issued, but applying only to those who held knights' fees of the king. The king received no small revenue from the fines and confiscations resulting from the enforcement of these writs. Much is heard of distraint of knighthood in the following reign.

### 12. Writ Summoning Four Knights of the Shire.

In June, 1226, a writ similar to this had been sent to eight counties—Gloucester, Dorset, Somerset, Bedford, Buckingham, Westmoreland, Northampton, and Lincoln. The meeting was to have been held at Lincoln the following September. But the king, finding that he could not be present on the day set, sent out word on September 2 that the meeting was not to be held, and hence it would not be necessary to elect the knights. Nothing further is heard of the matter until the next year, when the writ here printed was sent out on August 13. Evidently these local disputes about provisions in Magna Carta had spread and become more serious, so that now it was thought necessary to hold a nation-wide hearing on the subject. The king wished to hear the people's story from their own elected representatives. It was probably before the king and his council that the knights and sheriffs were to appear at Westminster.

### 13. Writ Summoning Representatives of Seven Boroughs.

The first five towns mentioned in this writ are the Cinque Ports, the ancient group of southeastern ports, charged with special burdens of defense and enjoying compensating honors and privileges. There are several instances during the first part of the thirteenth century in which the king transacted business with the Cinque Ports by methods similar to that shown here. But in this case

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the two "ancient towns" of Rye and Winchelsea were included in the summons. The very critical relations with France just at this time were probably the occasion of the meeting.

### 14. Writ Summoning Two Knights of the Shire.

As the king was conducting the campaign in Gascony, this writ was sent out by the authority of the queen and the king's brother, the Earl of Cornwall. A great council had just been held (January 27) and the prelates had on that occasion refused to make any engagements on behalf of the lower clergy. Indeed they mentioned some concessions which they believed would have to be made in order to secure a money grant for the present purpose. But they promised to use all diligence and zeal in setting forth the king's need and in obtaining as liberal a grant as possible. So, on the same day that the writ here printed was sent out to the counties, writs having the same object were sent to the several bishoprics, suggesting diocesan meetings of the clergy for the presentation and discussion of the matter; and from these meetings "discreet men" were to come up to Westminster to certify the king's council of the local actions. As to the attitude of the laymen, the regents wrote to the king three days after these writs were sent that they did not believe he would obtain an aid from them unless he were able in some way to convince them of his bona-fide intention to observe and enforce the charter of liberties. This was already an old grievance. Magna Carta had thus early acquired a great name and was an object of reverence, and, often as Henry III. had broken faith, his solemn promise to keep the charter was the surest way to win money from his people.

### 15. Writ Summoning Three Knights of the Shire.

In April, 1261, Henry had been released by papal bull

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from the oath which bound him to observe the Provisions of Oxford; and he forthwith proceeded to restore the government as rapidly as possible to the old basis. This of course greatly alarmed the baronage, for they saw all the fruits of their victory and great labor in 1258 slipping away from them. The pressing danger did a great deal to heal the feuds that success had bred in the barons' ranks, especially the feud between the earls of Leicester and Gloucester; and during the summer and autumn, something of the former unity of action was restored. The barons evidently felt the need of a broader backing, and, in this new crisis, proposed to consult the gentry. This seems to have been the purpose of the summons referred to in the king's writ here printed, and this is all that is known of it. But the king's party could not allow the opposition the advantage of this conference, and hence attempted to forestall it. There is nothing to show whether or not either of these rival meetings was held.

### 16. Writ Summoning Four Knights of the Shire.

The battle of Lewes, in which Simon de Montfort and his followers won their great victory, was fought in May, 1264. It left Simon in substantial authority, but writs were issued and all other business done in the name of the captive king. Three weeks after the battle the writ here printed was issued. The proposed assembly was held, and transacted important business relating to a provisional scheme of government under which the country was to be ruled until the points in controversy could be settled in some permanent way.

### 17. Writs Relating to the Assembly of January, 1265.

Most of the summoning writs for this assembly were issued in December of the same year as the preceding; but the writs to the Cinque Ports appear not to have been issued until the very day of assembling, unless, as



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there is some evidence, there was postponement or delay of a week. From June to December, Simon had been fully occupied in securing the fruits of victory, and in attempting to subdue or reconcile many half-conquered or discontented elements. He had no united baronage back of him; he led a faction. He had before this shown a disposition to seek a broad foundation of counsel and support in the English middle classes, and the present situation carried him much further in the same direction. The assembly which met in January continued well into March, and, for the most part, served its expected purpose. The form of government proposed in the assembly of the previous June was confirmed and very favorable terms were made with the king's son, Edward, the strongest man on the royal side. It may perhaps be said that during the days of this assembly Simon's fortunes were at their height, and yet the bitter quarrel with the Earl of Derby was itself an indication of the sources of the swift and complete overthrow which was impending.

### III. QUESTIONS AND SUGGESTIONS FOR STUDY

[In answering the questions on this problem, the student is expected to use also, when necessary, the sources printed for Problem II.]

1. In the cases of sworn inquest from Henry II.'s reign or earlier, from what <sup>(2)</sup> classes were men most frequently selected? What were their chief qualifications?
2. Why were so many different classes asked questions in the Inquest of Sheriffs? With what general lines of information was the king concerned here?
3. How did the Assize of Arms involve taxation? Just what was the function of the sworn inquest here? In what other document or documents was it used in substantially the same way?

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4. Enumerate the instances here shown for the twelfth century in which the sworn inquest was used entirely apart from court procedure. Find a case or cases in which the same group was questioned on both judicial and non-judicial matters.
5. In what reign was there the greatest activity in applying the sworn inquest to new kinds of business?
6. In what ways besides the sworn inquest was the king employing men in local governmental affairs? Did any of these involve an official position?
7. When did the method of choosing men for inquests or other local purposes begin to change? What proves that there was a change? What does it seem likely was the earlier method? When first is the new method found in its completed form? How generally does the new method seem to have been adopted? Can you suggest any reason for the change?
8. What is the clearest example of the principle of representation in the reign of Henry II.? In what sense were the men on a sworn inquest acting in a representative capacity?
9. What was the first instance of the king's purposing to gather jurors from various parts of the country to one place? What had been the earlier method of dealing with scattered juries which were to be questioned on the same matter? Suggest some reasons for the change.
10. When first did the king summon a fixed number of men from each county to a central assembly? For what purpose did he summon them?
11. When were popularly-elected knights from each county first summoned to a central assembly? On what business were they summoned? Did they come as representatives? What arguments pro or con can you make on this last point?
12. What was the second instance of concentration of popularly-elected knights of the shire? Make a careful comparison of these two cases from the point of view

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of the functions and representative character of the elected knights. Is there anything to show, in either case, before whom the knights were expected to appear?

13. How does the knights' previous history account for the king's use of them in these instances? Can you suggest any reason for the measures known as "distrainment of knighthood"?
14. Of what local representative assembly do you find evidence?  
✓ To just what extent was it representative? Give reasons for or against the view that this assembly suggested the practice of summoning local representatives to the center.
- ✓ 15. Is there any respect in which the 1261 assembly represents an advance over previous ones? The 1264 assembly?
16. From what sources may Simon de Montfort have received suggestions for the new element in his assembly of 1265?
- ✓ 17. What was done about the counties which failed to return knights to this 1265 meeting? How does this measure illustrate the undeveloped state of these practices?
- ✓ 18. In which instance is there evidence that knights were paid wages or expenses for representing their counties in a central assembly?
- ✓ 19. In which of the central assemblies does information seem to have been the chief thing wanted from the local representatives? In which was counsel wanted?
- ✓ 20. In which assemblies is there evidence that the local representatives acted with, or in any way became a part of, a great council of barons? Is there anything which shows whether or not such association was considered normal or desirable?
- ✓ 21. Where does it seem to you lay the responsibility or initiative in the various practices which led up to these assemblies?

#### IV. The Sources

1. *Inquest of Sheriffs*. 1170. (Latin text in Stubbs, *Select Charters*, ninth edition, pp. 175-178. Translation by the editor.)

In the first place the barons shall require security and pledge from all sheriffs who have been sheriffs since the lord king last crossed into Normandy, and from all who have been bailiffs or ministers of these [sheriffs], whatever bailiwick they have held from them; also from all those who since that time have held hundreds of the barons which they [the barons] have in the county, whether they have held them at firm or in custody;—that they will be before the lord king on the day which they [the barons] shall set for them for the purpose of doing right and redressing to him and his men what they ought to redress. . . .

Afterward they [the barons] shall take oath from (all the barons and knights and free men) of the county that they will tell the truth concerning that which shall be asked of them on behalf of the lord king; and that they will not conceal the truth for love of any one or for hatred or for money or reward or for fear or promise or for anything else.

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[There follows here a large number of items of inquiry grouped in some twelve articles. They relate mainly to the doings of the sheriffs and other local officials, to various sources of revenue, both royal and baronial, and the condition of the royal demesne.]

### 2. *Gesta Regis Henrici Secundi Benedicti Abbatis.*

1175. (Latin text from the *Rolls Series* edition, I, 91, 92. Translation by the editor.)

And so, the council having ended, the lord king, and with him the king his son, took his journey in pilgrimage to the blessed Thomas of Canterbury, martyr. And returning thence, they held court and royal festival on Whitsunday at Reading. And from there the king sent with his letters one of his clerks, Roger of Hoveden by name, to the church of Norwich which was then vacant, its pastor having died, and to the vacant abbeys throughout England; notifying the prior and convent of the vacant abbeys that the prior himself with five or more of the more discreet and wiser of his house, who would suffice for the purpose, were to come to Oxford to meet him and the lord archbishop of Canterbury on the Nativity of St. John the Baptist,<sup>1</sup> for the purpose of electing the needed pastor for his house. And he commanded that each prior bring with him letters of the convent to the effect that the others who remained at home would regard as valid whatever he and those who came with him might do. Likewise

<sup>1</sup> June 24.

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the Archbishop of Canterbury wrote to the same houses that the prior and with him five or more of the wiser and more discreet, with letters of the convent, as stated above, should come to meet himself  
5 and the lord king, to elect themselves a pastor. And he sent Master Robert of Hinglisham, his clerk, to the said abbeyes with the said king's clerk. There were at that time twelve abbeyes vacant in England in the diocese of Canterbury, whose names follow;  
10 and, besides, the bishopric of Norwich.

3. *Assize of Arms*. 1181. (Latin text in Stubbs, *Select Charters*, ninth edition, pp. 183, 184. Translation by the editor.)

1. Whoever has the fee of one knight let him  
15 have a coat of mail and a helmet, a sword and a lance; and let every knight have as many coats of mail and helmets, swords and lances, as he has knights' fees in his demesne.

2. Any free layman who has in chattels or in in-  
20 come to the value of sixteen marks, let him have a coat of mail and helmet, sword and lance; but any free layman who has ten marks in chattels or income is to have a hauberk, an iron headpiece, and a lance.

3. Also all burgesses and the whole body of free  
25 men are to have a doublet of mail, an iron headpiece, and a lance.

9. And the justices shall cause an oath to be taken  
by lawful knights or by as many other free and law-

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ul men of the hundreds and of the boroughs, as they shall deem proper who have the worth of chattels on the basis of which one ought to have a coat of mail and helmet, lance and sword, as stated above, that they will name to them one after another all of their hundreds and of their neighborhoods and of their boroughs who have sixteen marks in chattels or in income, and likewise those who have ten marks. And afterward the justices shall cause a record to be made of all those jurors and of the others who have that amount of chattels or income and of the arms which they ought to have according to the value of their chattels or income. . . .

.. *Ordinance of the Saladin Tithe.* 1188. (Latin text in Stubbs, *Select Charters*, ninth edition, p. 189. Translation by the editor.)

1. Every one shall this year give in alms a tenth of his revenue and movables, excepting the arms, horses, and equipment of the knights; likewise excepting the horses, books, equipment, vestments, and all manner of furnishings for divine service of the clergy, and also the precious stones of both clerks and laymen.

2. This money is to be collected in the several parishes, there being present the parish priest, the archpriest, a Templar, and a Hospitaller, a minister of the lord king, and a clerk of the king, a minister of the baron and the baron's clerk, and a clerk of the bishop; excommunication having been previ-

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ously pronounced by archbishops, bishops, and the arch-priests in the several parishes upon any one who should not rightfully give the assessed tenth, in the presence and with the knowledge of those who ought to be there, as aforesaid. And if, to their knowledge any one should give less than he ought, let there be chosen from the parish four or six lawful men, who shall state upon oath the amount which he ought to have declared; and then that ought to be added to his smaller payment.

5. *Form of Proceeding on the Judicial Visitation.* 1194  
(Latin text in Stubbs, *Select Charters*, ninth edition, pp. 252-257. Translation by the editor.)

In the first place there are to be chosen four knights from the whole county, who upon their oath shall choose two lawful knights from each hundred or wapentake, and these two shall choose upon their oath ten knights from the several hundreds or wapentakes; or, if knights be lacking, lawful and free men so that these twelve may at the same time make answer upon all the heads for the whole hundred or wapentake.

[There follow twenty-five heads or articles showing a great variety of both judicial and general administrative business upon which the jurors were questioned. The twentieth article refers to coroners, who were probably chosen by some form of popular election in the county court.]



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20. Moreover, in each county let there be chosen three knights and one clerk keepers of the pleas of the crown.

. *Summons of Juries to St. Albans.* July 21, 1213.

(Latin text in Stubbs, *Select Charters*, ninth edition, p. 271. Translation by the editor.)

On the morrow the king sent letters to all the sheriffs of the kingdom of England, commanding that they should cause to assemble at St. Albans, on August fourth, (four lawful men and the reeve from the several vills of his demesne) so that through them and his other ministers he might make inquiry concerning the damages and losses of the individual bishops, and what he owed each.

. *Summons to a Great Council.* November 7, 1213.

(Latin text in Stubbs, *Select Charters*, ninth edition, p. 282. Translation by the editor.)

The king to the sheriff of Oxford, greeting. We command you that all the knights of your bailiwick, who have been summoned to be with us at Oxford fifteen days after All Saints' Day, you cause to come with their arms; likewise the barons, but without arms; and you are to cause to come to us there at the same time four discreet men of your county to speak with us about the affairs of our kingdom. Witness myself at Witney, the seventh day of November.

In the same way it is written to all the sheriffs.

. *Magna Carta.* June 15, 1215. (Printed in full

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in the Appendix, pp. 380-396. In connection with this problem, study especially articles 18 and 48.)

9. *Writ for Assembling the County Court before the Itinerant Justices.* 1218. (Latin text in *Rotuli Litterarum Clausarum*, I, 380. Translation by the editor.)

The king to the sheriff of Yorkshire, greeting. Summon by good summoners all the archbishops, bishops, abbots, earls and barons, knights and freeholders of your whole bailiwick, and from each vill four lawful men and the reeve and from each borough twelve lawful burgesses throughout your whole bailiwick, and all others of your bailiwick who are accustomed and ought to come before the justices itinerant, that they be at York before our justices fifteen days after St. Martin's Day<sup>1</sup> to hear and obey our command. And you are to cause to come before them at that time all pleas of the crown which have not been tried and which have arisen since the last assize (before the justices itinerant) was in those parts in the time of King John our father, and all attachments pertaining to those pleas, and all assizes and all pleas which have been set for the first assize before the justices, with the writs of the assizes and pleas; so that not any of those assizes and pleas may remain unconcluded because of any fault of yours or your summons. And you are to have proclaimed

<sup>1</sup> November 11.

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and made known throughout your whole bailiwick that all assizes and all pleas, which have been placed on the docket and not concluded before our justices at Westminster, are to be then brought before the said justices at York in that state in which they have remained at Westminster by our command. Summon also by good summoners all those who have been sheriffs since the last eyre of the justices in those parts, that they then be there before the said justices with the writs of the assizes and pleas which they received in their time, and to answer for their time as they ought to answer before justices itinerant; and you are to have there the summoners and this writ. Witness Earl William Marshall, guardian of ourself and our kingdom,<sup>1</sup> at Westminster, the fourth day of November. Before Stephen archbishop of Canterbury and Peter bishop of Winchester and the bishop of Durham.

In the same way it is written to all the sheriffs of England except those of Gloucester, Worcester, Hereford, Stafford and Shropshire, Leicester and Warwick, and Surrey; but the place varies as is shown on the dorse of the letters patent.

10. *Writ for the Collection of a Carucage.* 1220.

(Latin text in Stubbs, *Select Charters*, ninth edition, p. 349. Translation by the editor.)

The king to the sheriff of Northampton, greeting. Know that, because of our great necessity and at

<sup>1</sup> Henry III. was but eleven years old.

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the most urgent instance of our creditors, as also for the preservation of our land of Poitou, all the magnates and faithful of our whole kingdom have of their good will given their common consent that  
5 a grant be made us, viz.,/from each plough as it was joined on the morrow of the Blessed John the Baptist last past, in the fourth year of our reign, two shillings, to be collected by your hand and the hands of two of the more lawful knights of your  
20 county, who are to be elected to do this by the will and counsel of all of the county in full county court. And so we command you, firmly and strictly enjoining that, having summoned your full county court,  
by the will and counsel of those of the county court  
15 you cause to be elected two of the more lawful knights of the whole county, who shall better know, wish, and be able to prosecute this business to our advantage; and having associated them with you, you are immediately to cause that grant to be as-  
20 sessed and collected from the several ploughs through your whole bailiwick, as aforesaid, excepting the demesne of archbishops, bishops, and their villeins, and excepting the demesne of the Cistercian and Premonstratensian orders. . . .

25 II. *Distrainment of Knighthood*. 1224. (Latin text in *Rotuli Litterarum Clausarum*, II, 69. Translation by the editor.)

The king to the sheriff of Norfolk and Suffolk, greeting. We command you that without delay

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you cause it to be proclaimed throughout your whole bailiwick that every layman of full age who holds the fief of one knight or more in your bailiwick and is not a knight shall, before the Sunday following Easter in the ninth year [of our reign], assume arms and have himself made knight, as he loves the fief or fiefs which he holds. Witness as above. [The king at Westminster, 16th November.]

In the same way it is written to all the sheriffs.

### 2. *Writ Summoning Four Knights of the Shire.*

1227. (Latin text in *Rotuli Litterarum Clausarum*, II, 212, 213. Translation by the editor.)

The king to the sheriff of Cumberland, greeting. We command you that in your full county court you say to the knights and good men of your bailiwick that they elect from among themselves four of the more lawful and discreet knights, who are to be before us at Westminster, three weeks after the feast of St. Michael, for the whole county, for the purpose of there showing the complaint, if they have any, against you in regard to the articles contained in the charter of liberties granted to them; and you yourself are then to be there to show reason for the demand which you make against them. . . . And you are to have there the summoners and the names of the knights . . . and this writ. Witness the king at Northampton, the thirteenth day of August, the eleventh year, etc.

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[There appear on the roll the names of thirty-five counties to which this writ was sent.]<sup>1</sup>

13. *Writ Summoning Representatives of Seven Boroughs.* 1235. (Latin text in *Close Rolls*, 1234-  
5 1237, p. 161. Translation by the editor.)

The king to his bailiffs of the port of Dover, greeting. We command you, firmly enjoining that you cause twelve of the better men of your town to come before us at Dover on the Sunday next  
10 after the coming feast of the Purification of the Blessed Mary, for the purpose of speaking with us concerning our affairs. Witness the king at Westminster, the twenty-fifth day of January.

In the same way it was commanded the bailiffs  
15 of the ports of Hythe, Sandwich, and Hastings concerning the sending of six there; Romney, Rye, and Winchelsea concerning eighteen.<sup>2</sup>

14. *Writ Summoning Two Knights of the Shire.*  
20 1254. (Latin text in Stubbs, *Select Charters*, ninth edition, pp. 365, 366. Translation by the editor.)

*Form sent to the magnates and sheriffs of England.*  
The king to the sheriff of Bedford and Bucking-

<sup>1</sup> There were thirty-seven counties at this time. The names  
25 omitted on the roll were Westmoreland and Cornwall; yet Westmoreland was to have been represented at a meeting of eight counties called for this same business the year before. The omission of two names on the roll was probably due to a scribe's carelessness.

<sup>2</sup> It is not clear whether Hythe, Sandwich, and Hastings were to  
30 send six each or six together; and Romney, Rye, and Winchelsea eighteen each or eighteen together.

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ham, greeting. Since the earls and barons and other magnates of our kingdom have steadfastly promised us that they will be at London three weeks from Easter next, prepared with horses and arms and well equipped to proceed without delay to Portsmouth, for the purpose of crossing to us in Gascony to oppose the king of Castile, who is to make a hostile incursion into our land of Gascony with a strong force during the coming summer; and since we have commanded you to constrain to the same purpose all those of your bailiwick who hold from us in chief land worth twenty pounds a year, or those who hold from others who are under age and in our custody; we strictly command you that, besides all the aforesaid, you cause to come before our council at Westminster fifteen days after Easter next, four lawful and discreet knights from the said counties whom the said counties shall elect for this purpose, for all and singular of the said counties, that is, two from the one county and two from the other, so that, together with the knights of the other counties whom we have caused to be summoned for the same day, they may arrange what kind of aid they wish to furnish us in so great need. And you yourself are diligently to set forth to the knights and others of the said counties our necessity and our so urgent business, and you are effectively to induce them to furnish us an adequate aid at the present time; so that the aforesaid four knights

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can, at the time stated, answer definitely to our said council about the said aid for each of the said counties. Moreover, we straitly command you that all the previous debts in your bailiwick which ought to have been paid us at our exchequer before the present Easter, as well as those which are owing us at this Easter exchequer, you are to have at the exchequer fifteen days after said Easter; and you are to know that unless you have the said debts there at that time, we shall not only cause your body to be seized, but we shall have those debts levied from your lands and holdings to your no small damage. Witness Alienor Queen and Richard Earl of Cornwall, at Windsor, the eleventh day of February.

15. *Writ Summoning Three Knights of the Shire.*

1261. (Latin text in Stubbs, *Select Charters*, ninth edition, pp. 394, 395. Translation by the editor.)

10. The king to the sheriff of Norfolk and Suffolk, greeting. Inasmuch as on the authority of the bishop of Worcester, the earls of Leicester and Gloucester, and certain other magnates of our kingdom, three knights from each of our counties have been summoned to be before them at St. Albans at the coming feast of St. Matthew the Apostle, to treat with them concerning the common interests of our kingdom; and since we and our aforesaid magnates should meet the same day at Windsor to treat of



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peace between us and them; we command you that,  
on our behalf, you firmly enjoin upon those knights  
of your bailiwick, who have been called before them  
on the aforesaid day, that, every excuse set aside,  
they come to us at Windsor on that day; and you  
are also strictly to forbid them to go anywhere on  
that day except to us; indeed, you are to use every  
means to make them come before us at that time,  
so have a conference with us on the said matters;  
so that, as a result of this occasion, they may see  
and understand that we are not proposing to under-  
take anything except what we know will redound  
to the honor and commonweal of our kingdom.  
Witness the king at Windsor, the eleventh day of  
September.

### 16. *Writ Summoning Four Knights of the Shire.*

1264. (Latin text in Stubbs, *Select Charters*,  
ninth edition, pp. 399, 400. Translation by  
the editor.)

The king to Adam of Newmarket, greeting. . . .  
And because in our coming parliament it is fitting  
and necessary to discuss our affairs and the affairs  
of our kingdom with the prelates, magnates, and  
others of our faithful, we command you to send to  
us for that whole county [Lincoln] four of the more  
awful and discreet knights of said county, chosen  
with the county's assent; so that they be with us  
at London on the octave of the coming feast of the  
Holy Trinity at the latest, to treat with us of the

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aforesaid matters; . . . Witness the king at St. Paul's, London, the fourth day of June.

[*Twenty-eight other counties are named on the roll as receiving similar writs.*]

5 17. *Writs Relating to the Assembly of January, 1265.*

(Latin text in *Report on the Dignity of a Peer*, Appendix I, part i, pp. 33-35. Translation by the editor.)

a. Henry, by the grace of God, king of England,  
10 lord of Ireland, and duke of Aquitaine, to Robert  
the venerable father in Christ, by the same grace  
bishop of Durham, greeting. Since, after the grave  
crises of the recent disturbances in our kingdom,  
our dearest son Edward, our first born, has remained  
15 a hostage for securing and establishing our king-  
dom's peace, and since, God be praised, these dis-  
turbances have now been allayed and it behooves  
us to take counsel looking to his happy liberation,  
the full establishment of the conditions of peace and  
20 quiet, to God's honor and our whole kingdom's  
welfare, and certain other business of our kingdom,  
all of which we are unwilling to undertake without  
your advice and that of our other prelates and mag-  
nates; we notify you, making request on the grounds  
25 of the faith and love by which you are bound to us  
that, setting aside every excuse and leaving all  
other business, you be with us at London on the  
octave of St. Hilary<sup>1</sup> next to treat with us of these

<sup>1</sup> The feast of St. Hilary was January 13.

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ffairs and to furnish your counsel, along with our aid prelates and magnates whom we have caused to be summoned to the same place. And this you are in no wise to neglect, as you love us and our honor and yours and the general peace of our kingdom. Witness the king at Worcester, the fourteenth day of December.

["The same writ was addressed to the Archbishop of York, the Bishop of Carlisle, the Dean of York, ten abbots and nine priors of the northern province, and to ten bishops and four deans of the southern. A similar one was issued at Woodstock on the 24th of December, to fifty-five abbots, twenty-six priors, the Master of the Temple, and the Prior of the Hospitalers; also to five earls and eighteen barons."]<sup>1</sup>

Also notification was sent to the several sheriffs throughout England that they cause two knights of the more lawful, upright, and discreet knights of the several counties to come to the king at London on the said octave according to the above form.

And in the above form it is written to the citizens of York, the citizens of Lincoln, and to the other boroughs of England that they send in the said way two of the more discreet, lawful, and upright of their citizens or burgesses.

And in the same form notification was sent to the

<sup>1</sup> This is Stubbs's summary, *Select Charters*, p. 403. On the 26th of December a similar summons was sent to the bishop of Norwich, *Report on the Dignity of a Peer*, App. I, pt. i, p. 35.

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barons and good men of the Cinque Ports as is contained in the writ enrolled below.

b. The king to his barons and bailiffs of his port of Sandwich, greeting. Since we have caused to be  
5 summoned the prelates, magnates, and nobles of our kingdom to our approaching parliament which will be at London on the octave of St. Hilary, to consider the business of freeing our eldest son Edward and  
10 other matters touching the commonweal of our kingdom—where we greatly need your presence as well as that of our other faithful—we command you in the faith and love by which you are bound to us, strictly enjoining that, setting aside all other things, you send to us there four of the more lawful and dis-  
15 creet of your port, so that they be there on the afore-said octave to treat with us and the said magnates of our kingdom, and to furnish counsel upon the  
20 matters stated. And see that you in no wise fail to do this as you love our honor and yours and the commonweal of our kingdom. Witness the king at Westminster, the twentieth day of January.

Similar notification was sent to the several ports individually.

c. The king to the sheriff of Yorkshire, greeting.  
25 Inasmuch as we have recently had summoned two of the more discreet knights of our several counties of England to be with us in our parliament at London on the octave of St. Hilary last past, to discuss with us and with our council about the deliverance

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of our dearest son Edward and obtaining security for it and also about other difficult business of our realm, and these same knights made a longer stay there than they had expected and hence were subjected to no small expense; and since the communities of the said counties have several times during this year made grants for the defense of our kingdom and especially for guarding the coast against the incursion of foreigners, as a result of which they feel themselves somewhat too heavily burdened; we therefore command you that you pay to the two knights who attended the above-mentioned parliament for the said county their reasonable expenses (on the advice of four lawful knights of the same county) in coming to said parliament, remaining there, and returning home thence, and that you levy these expenses on the said community, it being provided because of this grant that this community shall not in any way be further burdened. Witness the king, at Westminster, the fifteenth day of February.

d. The king to the sheriff of Shropshire and Staffordshire, greeting. Inasmuch as we have recently had summoned the prelates, magnates, and nobles of our kingdom to be with us at London fifteen days after the feast of St. Hilary last past, in the matter of the liberation of our eldest son Edward and obtaining security for it and for other matters touching the community of our kingdom and to treat with us

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of the same, and we commanded you, as we did our other sheriffs throughout England, that you cause to come to us from each of the said counties for the said day and place two of the more discreet and lawful knights of the same counties, to treat with us and the said magnates on behalf of the community of those counties concerning the matters mentioned above and to furnish their advice; and since from the said districts no knights came there at our command, at which we are greatly surprised and moved, we command you a second time strictly enjoining that you cause the said knights to come to us, so that by all means they be with us fifteen days after the feast of St. Peter in Cathedra,<sup>1</sup> wherever we may then be in England, to speak with us and with the magnates who are of our council about the afore-said matters. And you are so to conduct yourself in executing our command that we shall be under no necessity of dealing with you for your shortcoming. Witness the king at Westminster, the 23rd of February.

<sup>1</sup> This feast was February 22.

## PROBLEM IV

[V.—An Aspect of the Agricultural Labor  
Problem in the Fourteenth Century





# An Aspect of the Agricultural Labor Problem in the Fourteenth Century

## I. THE HISTORICAL SETTING OF THE PROBLEM

**B**ELOW knight and freeholder was the villein, the typical member of the English peasant class. In the half or three-quarters of a century following the Norman Conquest, and largely as a result of it, rightlessness of the thoroughgoing personal sort and most of the forms of household slavery came to an end. But predial serfdom remained. This means the serfdom related to land tenure. The villein was not free to leave his land, and his payments to the lord were from the land or in the form of service on the lord's demesne land. The freeholder made such payments also, but they were less burdensome in his case, were more fixed in quantity and in time and manner of payment. The villein, notwithstanding the protection which accrued to him from the restraint of manorial custom and precedent, was always more or less at his lord's disposal. But the most striking trait of English villeinage and that which looked straight toward freedom was its relative character. The villein was free toward all but his lord. And when the king, through his itinerant justices, his sheriffs, and his other means of local interference, began to touch the localities with his centralizing power and methods, and the great

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system of king's courts began to grow, he was generally disposed to look at the villein on the free side. Here also the sworn inquest played no small part of its mighty rôle in the history of democracy. Villeins were placed on juries whenever the king sought information which they could best furnish; and, although they were not associated with those above them as the freeholder was associated with the knight, yet jury service often occasioned strange approximations of high and low, and it must be remembered that those great, complex grand juries of the hundred, which presented criminals, while not acting as a unit, did regularly contain knights or freeholders, and villeins. But the basic causes of the passing of villeinage must be sought in changing economic conditions. The central government's treatment of the villein was a contributory cause.

The villeins were the chief element on the manor, and the manor was, after the Norman Conquest as for long before, the economic unit. Its grand foundational idea was that its lord owned the land, a liberal portion of which was his demesne cultivated directly for him, while the rest was held by tenants who paid for its use by working on the demesne and by making payments in money or kind. The manor was economically self-sufficient. Salt and iron were the only important things regularly obtained outside. The typical manor contained some freeholders, many villeins, whose tenure was normally the virgate of thirty acres, and often some more or less negligible remnants of ancient classes or sub-classes farther down in the economic and social scale. Money was not extensively used in rural England in the early Middle Ages. Some money transactions there were: the bailiffs sold some produce at the markets, and the manor's salt and iron were bought with money; the freeholders'

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ents were often paid wholly or partly in money, and even the villeins occasionally had money dealings with their lords. But the early medieval rule was land in exchange for labor, and labor (or the land's products) in exchange for land. As long as this held even approximately, labor would not be migratory. A villein thought long before he left even a very hard lot, because his chances of finding another holding open to him—normally the only thing he could get for his labor—were slender. He did sometimes find safe harborage in the towns, and that with growing frequency during the twelfth and thirteenth centuries; and in this way the slowly increasing population, but slightly provided for by subdivided holdings and the cultivation of new lands, found vent. But in general the fugitive villein ran great chances of becoming a vagabond, often a criminal, and the medieval vagabond was subject to the worst suspicions and to harsh treatment. So villeins lived generation after generation on the same bit of land, in the same poor dwelling, fulfilling the custom of the manor in rent and "works,"<sup>1</sup> custom that had formed and hardened through infinitesimal accretions from a forgotten past until, in endless stagnation and inbreeding, it had reached a local, self-important pettiness and deadness to new influences that are beyond belief.

The chief agent in wrenching the manor from its past, and in mobilizing its elements, was money as a medium of exchange, the advent of the money economy; and this advent, like so many other things new and wonderful in the Middle Ages, is largely to be identified with the thirteenth century.—The long peace since the Norman Conquest and the closer relations with France and Flanders had done their work in building up trade and industry.

<sup>1</sup> A "work" is usually understood to mean that portion of the customary labor owed by the tenant which was rendered in a single day.

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Trade and industry brought money to the ports and the larger inland towns; and from these it passed down rather promptly into the manorial relations. Indeed, it is now recognized that past writers have assumed a greater difference between urban and rural communities in the matter of a money economy than really existed.<sup>1</sup> As soon as lords and villeins could, on any considerable scale, market their surplus produce for cash, there was introduced a factor into the rural economy which worked in several reciprocal directions. The lord began to have a supply of money with which he could hire labor, assuming there was labor to be hired; that is, assuming a free and floating laboring class; and this same source of cash made it possible for thrifty villeins to buy themselves free and create such a class. Also the villeins, whether or not on the road to manumission, increasingly "bought their works,"<sup>2</sup> and thereby augmented at once the lord's need of labor and his means of hiring it. And besides transient labor, often before there was much of it, many manors had several permanent hired laborers (ploughmen and carters, for instance) who might, indeed, be serfs as well as freemen.<sup>3</sup> But, speaking broadly, hired labor meant

<sup>1</sup> Some significant conclusions on this and related matters have been reached by H. L. Gray in *The Commutation of Villein Services in England before the Black Death*. *English Historical Review*, XXIX (1914), pp. 625-656.

<sup>2</sup> That is, commuted part or all of their customary labor services into a money payment. By doing this the villeins gained more time to work their own holdings profitably. Sometimes such commutations were at the lord's initiative and for a time increased the villeins' burden. Sickness or weather not seldom cut down the number of "works" which a villein rendered in a year, but neither sickness nor weather diminished the money payment which now represented those "works."

<sup>3</sup> In general, team-service ceased to be performed by the villein tenants before hand-service.

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reeve labor, and to change a labor rent into a money rent was to make labor free. The leaven was working in the English peasantry and perfectly natural processes were inaugurating the next great change. The Norman Conquest set in operation forces which ended slavery. These later causes undermined the characteristic villeinage of the twelfth and thirteenth centuries. In the fourteenth and fifteenth centuries a new state of society was brought forth and there were very serious new problems.

### II. INTRODUCTIONS TO THE SOURCES

#### 1. *Cartularium Monasterii de Ramseia.*

This Cartulary of Ramsey Abbey was, as the word *Cartulary* indicates, the record-book of the abbey. It 'contains charters, inquisitions, manorial extents,<sup>1</sup> surveys of knights' fees, final concords, pleas in royal courts, etc., A.D. 974-1436.' The excerpt here printed is from the inquest made in 1252 concerning the abbey's manors of Upwood and Great Raveley. In this inquest the traditional manorial group of four men and the reeve was put on oath and made to tell all it knew of the abbey's lands and tenants in the manor. We read of

<sup>1</sup> *Extent* and *inquisition*, in this connection, are different terms or the same thing. It was a sort of periodic taking account of stock on the part of the lord; detailed information was collected, usually by means of the sworn inquest, about tenants, tenures, services, and such sundry and incidental information as seemed important or interesting. Generally the steward conducted the inquest and drew up the information collected in formal shape. It was also customary to make an extent whenever the manor changed hands. It is to be distinguished from the less elaborate *compotus* roll and *custumal*, the former being the bailiff's yearly financial statement to the lord, and the latter a record of the amount of land held by each tenant and the services.

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the manor's chapel, its vicar and his revenues, a detailed enumeration of the abbey's demesne in Upwood; a summary of the lands outside the demesne; an account of the freeholders' tenures and services, followed by those of the regular virgate-holding villeins, of whom Nicholas (the description of whose services constitutes the present excerpt) is the type and example; and, after the virgate-holders, the various lesser holders with their fractions of virgates and corresponding services. The noted Benedictine monastery of Ramsey and its extensive lands were located in the fen country of northern Huntingdonshire.

2. *The Extent of the Manor of Borley* is a similar document for a much later date, based upon the sworn statements of the reeve and (in this case) five men of the manor. It is an unusually complete extent, and the excerpts here given show the services and obligations of the different classes or groups of tenants. Borley, at this time a royal manor, was located in Essex.

### 3. *Typical Lists of Manorial Services.*

It will readily be seen that these lists are not themselves original documents. They are summaries made up by a recent writer, from bailiffs' accounts. But being largely lists of figures and accurately compiled, they may properly be used here as source material. Bailiffs' accounts (more technically known as *compotus rolls*) were usually rendered annually and contained a record of all the manorial receipts and expenditures, hence full information on commuted "works" and hired labor; also a good many other data, such as the amount of land under tillage each year, who were the manor's officials, the regular hired laborers, etc. These accounts were rendered to the steward, who must see that the interests of the lord were safeguarded. The manors whose accounts are here summarized were all in the county of Hertford.

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4 and 5. *Henry Knighton*, whose chronicle gives an important account of the Black Death,<sup>1</sup> was a canon of St. Mary's Abbey in Leicestershire. The chronicle covers from 959 to 1366. To 1336 it is largely derived from other chronicles. From that point it is approximately contemporaneous and probably original; for the years 1348 and 1349, J. R. Lumby (the editor of the *Rolls Series* edition) remarks that "Knighton is largely an independent authority."

The king's writ in behalf of John de Paddebury is a typical bit of evidence on the severity of the Plague from a public document.

6 and 7. *The Ordinance of Laborers*—the product, as its name indicates, of king and council—was an emergency proclamation issued between parliaments. In this reign, notable for almost annual sessions, the frightful

<sup>1</sup> It should be kept in mind that the Black Death, while worse than other plagues, was no isolated visitation. "Pestilence had appeared in 1315, 1316, and 1340, and dearth had ruled from 1308 to 1322, with the sole exceptions of the years 1311-13 and 1318-20. But the horrors of these times were thrown into the background by the Black Death, which in 1348 and 1349 devastated the country and left only about half the population living. A new outbreak of plague came in 1361-62, and the male sex and the upper classes more especially were swept off by it, though, the population being so much smaller, the absolute number of deaths was less. With it came a terrible cattle-plague, and the same was the case with the third outbreak, which lasted from 1368 to 1369. New epidemics raged in 1370 and 1381-82, again accompanied by dearth and cattle-plague; and these were followed by yet others in the last decade of the fourteenth century and throughout the fifteenth."—Hasbach, *A History of the English Agricultural Laborer*, pp. 20-21.

The population of England was not far from two millions at the Conquest. It had increased very considerably by the beginning of Edward III.'s reign; but the Black Death and other epidemics and the wars so far cut it down that even at the Tudor accession in 1485 it was scarcely two and a half millions.

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calamity of the Black Death sufficed to cause an interval during 1349 and 1350. A parliament summoned for January of the former year was prorogued to April, and then prorogued *sine die*, it being impossible, under the circumstances, to assemble and transact business. The first parliament after the plague met February 9, 1351, and took up the same labor problem with which the Ordinance had dealt, but after an interval which may well have served to bring out features which could not have been taken into account earlier. The result was the *Statute of Laborers*. These two great labor laws were looked upon as substantially co-ordinate and of equal legal sanction in all the attempts to enforce them throughout the fourteenth and fifteenth centuries.

Such legislation was not new in kind; the economic thought of the Middle Ages was to attempt to fix wages or prices by law whenever conditions appeared to demand it. The new things here were the unwonted scale upon which the attempt was made and the character of the enacting body. In our modern age, when the principles of *laissez faire* seem outworn and discussions about wage laws and regulation of the cost of living fill the air, it should be a matter of no slight interest to study this early economic legislation of England and the measures adopted to enforce it.<sup>1</sup>

8 and 9. *Writ Appointing Justices of Laborers and Proceedings before the Justices of Laborers*.

The Ordinance and later the Statute of Laborers created

<sup>1</sup> On this legislation of Edward III.'s reign was built the labor statute of Richard II. (1388), which has recently been spoken of as "perhaps the most important of all the enactments relating to laborers between the Black Death and the reign of Elizabeth," and "the basis of all subsequent Vagrancy and Poor Law legislation."—Bland, *English Economic History: Select Documents*, p. 171, note 3.



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an additional, and in some ways new, administrative problem. To enforce laws so detailed and touching such a numerous class was a great task. Various rather futile experiments were tried after the Ordinance, but when the Statute was made it was necessary to attack the problem more seriously, and recourse was had to the Justice of the Peace, already earning his name of "state's man-of-all-work." For something over a year, that is, until about the end of 1352, joint commissions for peace and for laborers were issued. These did not seem to work well; perhaps no method could have been devised that would. But there was complaint in parliament and a demand for new and different commissions with greater powers. This resulted in a seven-year experiment in issuing separate commissions to the so-called "justices of laborers," whose special function was to enforce the labor ordinance and statute, and who might or might not be in the commission of the peace. It was "a period of tentative attempts at regulation of economic matters by special commissions."<sup>1</sup> The present appointing writ constitutes one of these commissions. After 1359 there was a reversion, for reasons not altogether clear, to the preceding method. Doubtless it was felt that there was too much duplication of local machinery, and the sentiment of the period looked toward the greatest possible unity in county administration.

However, that the experiment with justices of laborers was by no means a failure and that it had some aspects significant beyond its own time are shown in the many extant records of proceedings. The last group of documents in this problem contains examples of these pro-

<sup>1</sup> This and the substance of the other statements here are derived from Miss Putnam's *The Justices of Laborers in the Fourteenth Century*. English Historical Review, XXI, 517-538.

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ceedings and conveys some notion of the seriousness and thoroughness with which the government addressed itself to the enforcement of its first great labor laws.

### III. QUESTIONS AND SUGGESTIONS FOR STUDY

1. From the thirteenth-century manorial "extent," make a list of the villein's definite yearly obligations to his lord grouped under three heads: *a*, payments in kind; *b*, money payments; *c*, labor services. What ones are stated indefinitely as to the amount or time? Consider these latter with respect to the villein's profitable cultivation of his own holding. What evidence is there that "works" were ever reckoned in terms of money or kind? What indication of commutation of works? What evidence of serfdom aside from the services?
2. Compare the early fourteenth-century villein's services with those of the thirteenth along the lines just suggested.
3. What is meant by "week-works"? What other general class of "works" do you find? In what months of the year were the greatest number of "works" due?
4. What evidence is there of the villein's ownership of farm implements or live stock?
5. Were free tenants regularly distinguished from villeins by larger holdings?
6. What class of laborers seems to have been first regularly hired on the manors? During the period here illustrated, was or was not the use of such laborers increasing? Furnish specific evidence to support your answer.
7. How do you account for the kind of rent paid by the "molmen"?
8. What evidence is there throughout the period of a tendency to reckon produce or service in terms of money, even where there is no trace of commutation? Account for this.
9. What indications of a subdivision of virgates and the existence of smaller holdings? What was the probable cause?

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10. During what part of this period does commutation of services into money appear to have been going on most rapidly? What general class of "works" was commuted first? Why? How would you account for the fact that the sum of rendered and commuted services did not always equal the number due?
11. Effect of the Black Death upon: acres sown; commutation of service; total rents of customary tenants (including labor services); number of hired laborers; holdings "in the lord's hand"; money leases.
12. Produce all the evidence possible to show how the pestilence affected the cost of living. Is there any indication that its initial effect differed from its more permanent effect?
13. Enumerate in detail the classes or groups of men who sought to turn to their financial advantage the conditions produced by the pestilence.
14. In what dilemma was the landlord often placed through the action of laborers after the pestilence? How did the king propose to deal with landlords who broke his labor ordinance?
15. Summarize the changes or developments which had been going on upon the manor which were accelerated by the pestilence. Were there any retarded? Any new ones inaugurated?
16. What are the important differences between the Ordinance and Statute of Laborers? Did the Statute supersede the Ordinance or supplement it? Did the justices of laborers have any authority or function beyond the content of the labor laws? Do any reasons suggest themselves for the appointing of special justices to enforce these laws?
17. What provision was made in these laws for determining a just wage and a just price? What was to be done if laborers refused to work?
18. What hint is there in the statute or elsewhere of the machinery which had been used to enforce the Ordinance? How successful had the enforcement been?
19. What provision was made against artisans refraining from

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exercising their crafts because of the limit set to the prices they might charge for their wares?

20. Did or did not this legislation run counter to the economic forces of the time? Produce specific evidence to support your answer.
21. In what respect are the traditional titles, Ordinance and Statute of Laborers, an insufficient index of the contents of the documents?
22. What evidence is there that laborers, in seeking higher wages, were becoming migratory? What measure was taken against this? How do you account for the exceptions made? How was day labor regarded?
23. What new method of hiring labor seems to have been instituted by the Statute? What was its purpose?
24. The Ordinance and Statute have often been looked upon as discriminatory legislation by the capitalist class against laborers. Collect all the data possible for or against this view.
25. What punishments or penalties were placed at the discretion of the justices for those who broke the Statute?
26. Does there seem to have been a vigorous attempt to enforce the labor laws? What difficulties were encountered? What form of trial was used? What impression do you get of the number prosecuted? Were the penalties which were being imposed adequately deterrent? How can the last point be proved beyond reasonable doubt?
27. What evidence is there that laborers were being regarded more in their relation to society in general and less in relation to their individual lords?
28. To just what extent is the statement that "the manor was breaking down" supported by the documents?
29. As far as the present documents justify such a generalization, was or was not the Black Death a determining force or turning-point in English economic history?
30. How would you summarize the changes through which the laboring class was passing during the period under review? Formulate what appear to you to have been the primary causes.

## IV. The Sources

1. *Cartularium Monasterii de Ramseia: CCIX.*  
1252. (From the Latin of the *Rolls Series* edition, I, 344-347. Translation by the editor.)

Nicholas, son of Hueman, holds one virgate of  
s land, for which he gives, by way of customary payment, twelve pence at the said times of year;<sup>1</sup> for the sheriff's aid at the same times six pence; and at the feast of St. Martin<sup>2</sup> a farthing for wardpenny; he gives tallage, merchet, lairwite, gersum, heriot,  
10 and hidage<sup>3</sup> when it occurs; for pannage for a swine of more than a year, two pence; for a swine of half a year, a penny and a half; for a swine of three months, a penny.

If he have ten swine, he shall choose the first, and  
15 the lord the second swine, and so for each swine beyond the ten he shall give as before; and so concerning his own.

<sup>1</sup> The feast of St. Michael (Sept. 29) and Easter.

<sup>2</sup> November 11.

20 <sup>3</sup> The student may find these and other unusual terms allowed to stand in the text in the more extensive dictionaries. It has seemed best not to try circumlocutory translations in such cases.

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If there shall not be a supply of mast, he shall give to the bailiff for his swine according to what can be arranged between them.

But if there be a supply of mast, he may keep his  
5 swine at home, yet for each one he shall give pannage as stipulated above.

Also he is to give a cock at Christmas; at Easter, five eggs; and two pence in Lent as fishsilver; he shall be quit of these for a work and a half when his  
10 turn comes; at view of frankpledge, a penny and a half; and at the feast of St. Benedict,<sup>1</sup> a half penny for wethersilver.

At Christmas four bushels of oats as "fodder-corn." He shall make a measure and a half of malt,  
15 which he shall take at his house, well cleansed; and he shall carry it to Ramsey; and for any deficiency, if such be found in it, he shall satisfy the maltster from his own. And these shall be credited him for the works of three days.

20 In each week from the feast of St. Michael to hoeing-time he shall work three days at whatever work shall be assigned him; and on the fourth day he shall plough twenty perches, whether he work with another or not.

25 Also he shall thresh twenty-four sheaves of wheat, and twenty-four of rye; of barley, oats, beans, and pease, thirty bundles for a work.

<sup>1</sup> March 21.

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If he is to ditch, let him do it, in level ground, for a rod, and the depth three feet; and the width at the top five feet and at the bottom two feet.

In old ditches he shall do for one work two rods  
5 of the same depth and width; from the feast of St. Michael until hockday<sup>1</sup> he shall gather four fagots of thorn and carry them to the court; and after hockday he shall gather five, and carry them in the same way; and as often as he gathers wood in a  
10 swamp or forest, he shall carry four fagots to a place near by where a court cart is likely to meet him; and when he has carried the fagots to the court, he shall make up two fagots which he shall sort well; and as for wood, so he shall do in gathering stakes  
15 to be used for making fences in the fields.

He shall gather five fagots in Raveley wood, and in the woods of Uppenhale and Bottenhale six fagots, which he shall carry on his back to the places which need fencing, and he shall fence a distance  
20 of thirty-four feet for a work. In winter he shall harrow from morning till evening for a work, and in Lent until sunset. At wheat-seeding he shall plough, for his virgate, twenty perches himself alone without co-worker; and at barley-seeding, as  
25 his plough is joined with others, he shall plough and harrow twenty perches, and so he and his co-workers shall be quit of the ploughing of those twenty perches.

<sup>1</sup> The second Tuesday after Easter.

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The reeve, the beadle, the forester, and the four ploughmen shall do this same ploughing at barley-seeding; but they shall not harrow.

He shall perform cart services as often as he shall  
5 be summoned.

And if, because the time is rainy or for any other reason unsuitable, any of the plough services are not performed, he shall fulfil those omitted plough services at another time, when it is commanded  
10 him. He shall hoe for a whole day; and he shall reap until the ninth hour; and on the day in which he reaps, after the ninth hour, he shall gather in hay, if it be necessary.

Also in gathering in hay he shall work the whole  
15 day; and he shall cut the half-acre of meadow called Benemedé; and he and his fellow-laborers shall have eight pence; and this shall not be credited him as a work.

From the meadow of Northwood, he, with his  
20 helper, shall carry four loads of hay to the court; and from the other nearer meadows he shall carry for one work.

And he, in connection with another virgate-holder, shall bring one load of hay to Ramsey; and  
25 with two associates he shall bring a second load.

Also he shall gather forty bundles of broom in the swamp, which he shall carry to the court in his cart; and if the depth of the swamp makes it impossible for the cart to enter, he shall have the use,



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without pay, of the abbot's boat to bring the said bundles to land.

He shall perform carrying service whenever and wherever ordered; and if he return on the first day  
5 it shall not be reckoned him as a work; but for the time consumed in going and coming beyond the first day he shall be quit of all work.

In each week, from reaping-time until the grain is garnered, he shall work with two men every day of  
10 the week except Thursday and Saturday; and after the grain has been gathered into the granary he shall work with one man at whatever shall be commanded him those same days in each week until the Nativity  
15 of the Blessed Mary;<sup>1</sup> and as many harvest days as, on account of the maturity of the grain, he fulfilled before the Gule of August,<sup>2</sup> so many days shall be credited him before the Nativity of the Blessed  
20 Mary; and from the Nativity of the Blessed Mary to the feast of St. Michael, he shall work four days a week with one man, as he did in hoeing-time; but he shall not plough.

In each week while harvest lasts, whenever it shall be commanded him, he shall carry five loads of grain to the storehouse; yet he shall find one man  
25 to work in the fields.

And to all the harvest services, he himself or his wife with their whole family shall come to work;

<sup>1</sup> September 8.

<sup>2</sup> August 1.

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and at the first service he shall have a sufficient amount of bread, ale, fresh meat, pot-herbs, and cheese; and at the other services he shall have fish; and if bread is bought they shall have two loaves  
5 at the price of three farthings.

He shall reap half an acre of grain, which is called good work; in one harvest week, he shall bind and carry home on Thursday or Saturday; and on the same day he shall carry one load elsewhere, which  
10 shall not be credited him as a work.

And if, in one week, he performs services on Monday, Tuesday, and Wednesday, in some other week he shall perform services on Thursday, on which day he owes his lord no work.

15 On the three Thursdays before Christmas, Easter, and the feast of St. Benedict he shall do whatever work may be assigned him.

He may not sell horse, cock, nor ox without the bailiff's permission, until he know whether or not  
20 it should be for the lord's use.

He shall gather a quarter of a bushel of nuts in the woods wherever it be commanded him.

On St. Michael's day before breakfast, he may sell as many of his swine as he can to whomsoever he  
25 will, without the bailiff's permission; but not after breakfast.

In regard to making hurdles and pens and standing guard at the time of St. Ive's fair he shall do the same as a virgate-holder of Wistow,

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And if he be sick continuously for a year and a day, he shall be quit of all work except ploughing, and after a year not at all.

If his wife survive him, she shall give five shillings  
5 as heriot; and she shall be quit of all work for thirty days; but if the lord will, she may compound for her works, which shall be estimated. If he, or his wife, or any other in the house die, as long as the body remains unburied, no work shall be re-  
10 quired except ploughing.

On the day he marries he shall, according to his ability, honorably remember the court servants with bread, ale, flesh or fish.

2. *Extent of the Manor of Borley.* 1308. (Latin  
15 text in Cunningham, *Growth of English Industry and Commerce*, third edition, I, Appendix, pp. 576-584. Translated by E. P. Cheyney in *Annals of the American Academy*, IV, 279-291.<sup>1</sup>)

20 *Free Tenants.*—William, son of Ralph, a Knight, holds from the lord 18 acres, by paying thence, yearly, at Easter, 18*d.*, and at the feast of St. Michael, 18*d.*

Henry of Lathley holds from the lord 50 acres  
25 of land, by paying thence, yearly, at Easter, 21*d.*,

<sup>1</sup> There is an important introduction by Professor Cheyney; *Ibid.*, pp. 275-278.

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and at the feast of St. Michael, 21*d.* And he is bound to attendance at the court.

John of Lystone holds from the lord in Borley 40 acres of land and 4 acres of meadow, by paying therefrom, yearly, at the feast of St. Michael, 6*d.* for all services.

William Joy holds from the lord one messuage and 20 acres of land, and 2 acres of meadow, and a half-acre of pasture, by paying therefrom, yearly, at the feast of St. Michael, 12*d.* And he is bound to attendance at court.

Hugh at Fen holds from the lord 6 acres of land, and a half-acre of meadow, and a rood of pasture, by paying thence, yearly, at the aforesaid two periods, 2*s.* 9*d.* And he is bound to attendance at court.

Reginald Crummelond holds from the lord 12 acres of land, by paying thence annually 10*s.* And he is bound to attendance at court.

William le Yachter holds from the lord in the demesne and in service 2 acres of land, and a half-acre of meadow, by paying thence yearly at Easter and at the feast of St. Michael in equal portions, 7*d.* And he is bound to attendance at court.

Molmen.<sup>1</sup>—The tenants of the land of Simon of Aunsel, viz., John Aunsel holds 1 cottage and 1 rood of land; Roger at Remete, 4 acres and 3 roods of land; Richard Gakoun, 2 acres of land; William

<sup>1</sup> "Men holding in villeinage, but paying money rent with light services."—CUNNINGHAM.

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Oslock, 1 acre of land; Augustus, the clerk, two acres and a half of land; Walter Morel, 3 acres of land; Dennis Rauf, 1 rood of meadow. And they pay thence, yearly, that is to say at Easter, 5 9d., and at the feast of St. Michael, 9d., and at the Purification, of Unthiel,<sup>1</sup> 2s. 2-3/4d., and at Christmas a hen of the price of 1-1/2d. And they will provide two men to reap for one bedrepe<sup>2</sup> in autumn at the will of the lord with the lord's food, as is 10 explained below. The price of each service is 2d. And they are bound to attendance at court.

*Customary Tenants.*—Walter Johan holds from the lord in villeinage one messuage and 10 acres of land, 15 by paying thence yearly at the festival of the Purification of the Blessed Mary, of Unthiel, 4s. 5-1/2d.; and at Easter 20-1/2d.; and at the feast of St. Michael, 26-1/2d.; and at the feast of Christmas, 1 hen and a half, the hen being of the price of 20 1-1/2d. And from the feast of St. Michael (September 29) to the feast of St. Peter ad Vincula (August 1) in each week 3 works with one man without the food of the lord, the price of a work being 1/2d., three weeks being excepted, 25 that is to say, Christmas week, Easter week, and Whitsuntide, in which they will not work unless it is absolutely required by the necessity for bind-

<sup>1</sup> The meaning of this word is not known.

<sup>2</sup> Often written *bedrip*.

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ing the grain in autumn and for carrying hay. And he shall plough with his plough, whether he has to join or not, 4 acres of the land of the lord without the food of the lord, the price of  
5 each acre being  $5-1/4d.$ , of which 2 acres are to be in the season for planting wheat and 2 for oats. And he shall carry the manure of the lord of the manor with his horse and cart at the food of the lord; that is, each day a loaf and a half of rye bread, of  
10 the size of 40 loaves to the quarter, and to weed the grain of the lord so long as there shall be any weeding to be done, and it shall be reckoned in his services. And he ought to mow the meadow of the lord; that is to say, 1 acre and the third part of an  
15 acre, according to suitable measure. And it will be reckoned in his services, that is for each acre, 3 works.

And it is to be known that whenever he, along with the other customary tenants of the vill, shall mow the meadow of Rainholm, they shall have, accord-  
20 ing to custom, 3 bushels of wheat for bread and 1 ram of the price of  $18d.$ , and 1 jar of butter, and 1 cheese next to the best from the dairy of the lord, and salt and oatmeal for their porridge, and all the morning milk from all the cows of the whole dairy  
25 at that time. And he shall toss, carry, and pile the said acre and a half of hay, and shall carry it to the manor, and it will be reckoned in his works. And he shall have for each work of mowing as much of the green grass, when he shall have mowed it,

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as he shall be able to carry on the point of his scythe. And when he has carried the said hay he shall have, at the end of the said carrying, the body of the cart full of hay. And he shall reap in autumn from  
5 the feast of St. Peter ad Vincula (August 1) to the feast of St. Michael (September 29) through the whole autumn, 24 works, without food from the lord, the price of one work being 1d. And he shall carry the grain of the lord and pile it, and it shall  
10 be accounted for in his works. And he shall have as often as he carries, one bundle called the men-sheaf; and he shall haul with his horse twelve leagues around the manor as much as the weight of 2 bushels of salt or of 3 bushels of wheat, of rye,  
15 of peas, or of beans; and of oats, 4 bushels. And he ought to go for the said grain and bring it to the granary of the lord with the aforesaid horse and his own sack. And he shall have, as often as he hauls, as much oats as he is able to measure and  
20 carry in the palm of his hand three times. And if he shall not have carried he is not to give anything, but there will be appointed in the place of each carrying one work of the price of a half penny. And he shall give aid and must attend the court.  
25 And he shall give merchet on the marriage of his daughter, at the will of the lord.

*[There follow here the entries of twenty-seven other villeins' rents and services, most of which, according*

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to the size of the holdings, resemble closely Walter Johan's; four cotemen with their minor holdings and services appear next; and the extent concludes with grand summaries and totals of the manor's annual value, in which the "works" are evaluated on a money basis.]

3. *Typical Lists of Manorial Services.* (Translated from summaries in T. W. Page, *Die Umwandlung der Frohndienste in Geldrenten*, pp. 48-51.)

10 Ashwell. In the year 1347, 260 acres were sown. The villeins performed 68 works in hoeing, 68 at hay-harvest. Everything else was done by hired labor. About 300 works in harvest were commuted.  
15 . . . In 1351, 143 acres were sown, and about the same service rendered or sold as before. . . .

Meesden. In 1347, 219 acres were sown. There were 14 villeins, each of whom owed, during the winter, one work per week. Of the week-works, about 200 were performed and 300 commuted.  
20 Besides these, they furnished 30 works in hoeing, and harvested 12 acres of hay and 190 acres of grain. Four ploughmen were hired, and 14s. were paid for hired labor at threshing and 4s. at hoeing, and the hay of 8 acres was harvested by hired labor.  
25 . . . In 1350, only 187 acres were sown, "less on account of the pestilence and the small amount of help." The villeins furnished in winter about the same amount of service as before, but harvested only about 90 acres in autumn. The pestilence



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caused the commutation of a few works into money payments. . . . Various holdings were "in the lord's hand," that is, they were without holders. The condition was the same in 1358, except that there  
 5 was a little more service furnished than during the pestilence.

Stevenage. In the year 1334, 325 acres were sown. Several herdsmen, four ploughmen, and one carter | were hired. Each of the 14 virgates, "the cus-  
 10 tomary land," was divided among several peasants. Each virgate owed, from Michaelmas to the middle of July, 5 works per week. There were also four cotters, each of whom performed 2 works per week, and besides were expected to harvest 5 acres of grain.  
 15 Counting the "boon-works,"<sup>1</sup> the services at this time divide thus:

	DUE	RENDERED	COMMUTED
Week-works in winter and summer.	1913	700	800
Cart services.....	280	250	21
Plough services.....	168	104	6
20 Harrow services.....	56	56	0
Autumn works.....	686	575	0
Service in carrying grain.....	28	27	0
Twenty acres harvested by cotters.			

. . . In 1349, 6-1/4 virgates were without holders  
 25 because of the pestilence; but the bailiff had 300 acres sown. In the autumn he had to give 13 acres of standing grain as pay to hired workers; 16 acres

<sup>1</sup> Special works, not fixed in amount, character, or time of rendering.

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were harvested by hired labor; and 10 acres of grain remained on the stalk through lack of laborers. Though labor was so much needed, yet money payments had to be taken in commutation of 12 acres' ploughing, 4 acres' harrowing, 15 cart services, 193 works in winter and 15 in harvest. In 1352, only 219 acres were sown, for 7-1/2 virgates and the holdings of 3 cotters were in the lord's hand. There was commutation of 22 acres' ploughing, 12 acres' harrowing, 91 cart services, 440 winter works, and 60 autumn works. In 1357, 9-1/2 virgates were vacant or let at a money rent; 245 acres of the demesne were sown. The same number of regular hired laborers was employed as before the pestilence, but in addition enough labor was hired by the day to supply about half the work on the demesne. In 1360, there were 10 virgates leased for money and the same number in 1362, when 10d. per acre had to be paid for harvesting, "through scarcity of men caused by the pestilence." In 1373, 11 virgates and 3 cotters' holdings were leased; 196 acres were sown. At this time the remaining customary service divides thus:

	RENDERED	COMMUTED
Week-works in winter and summer.....	256	75
25 Cart services.....	39	16
Plough services.....	30	0
Harrow services.....	15	0
Autumn works.....	110	0
Five acres harvested by cotters.		

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In 1377, 12 virgates and 3 cotters' holdings were leased; and in 1386, when 230 acres were sown, all the peasant holdings were leased. On this manor there is no further trace of customary service.

5 *Standon*. In 1343, 240 acres were sown, and a carter and 4 ploughmen were hired. Two virgates owed 3 works per week in winter, 3 eight-acre holdings owed 2 per week, and 2 cotters' holdings owed 1. But one eight-acre holding was leased, and  
10 rendered no more service. The services were distributed thus: 96 works in threshing, 31 in hay harvest, 10 in repairing buildings, 67 commuted; the villeins owed 67 in making malt, of which 19 were rendered; they were to plough 32-1/2 acres,  
15 but ploughed only 3; 6 acres were to be harrowed, but not any of this work was rendered; they owed 107 works in hoeing, and rendered 62; 88 in hay harvest, and rendered 86; 260 in corn harvest, and rendered 210; and, besides, a few "boon-works."  
20 Thus the manor remained till 1348. After the pestilence, the holdings came bit by bit into the lord's hands. In 1362, only 58 customary works were rendered, and in 1376 the manor was leased.

4. *Chronicon Henrici Knighton*. 1349. (From the  
25 Latin of the *Rolls Series* edition, II, 61-65. Translation by W. J. Ashley in *Edward III. and his Wars*, pp. 122-127.)

Then the grievous plague penetrated the sea-coasts from Southampton, and came to Bristol, and

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there almost the whole strength of the town died, struck as it were by sudden death; for there were few who kept their beds more than three days, or two days, or half a day; and after this the fell death  
5 broke forth on every side with the course of the sun. There died at Leicester in the small parish of St. Leonard more than 380; in the parish of Holy Cross more than 400; in the parish of St. Margaret of Leicester more than 700; and so in each parish  
10 a great number. Then the bishop of Lincoln sent through the whole bishopric, and gave general power to the priests each and all, both regular and secular, to hear confessions, and absolve with full and entire episcopal authority except in matters of debt, in  
15 which case the dying man, if he could, should pay the debt while he lived, or others should certainly fulfil that duty from his property after his death. Likewise, the pope granted full remission of all sins to whoever was absolved in peril of death and granted  
20 that this power should last till next Easter, and every one could choose a confessor at his will. In the same year there was a great plague of sheep everywhere in the realm, so that in one place there died in one pasturage more than 5000 sheep, and so  
25 rotted that neither beast nor bird would touch them. And there were small prices for everything on account of the fear of death, for there were few who cared about riches or anything else. For a man could have a horse, which before was worth 40s.,

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for 6s. 8d., a fat ox for 4s., a cow for 12d., a heifer for 6d., a fat wether for 4d., a sheep for 3d., a lamb for 2d., a big pig for 5d., a stone of wool for 9d. Sheep and cattle went wandering over fields and  
5 through crops, and there was no one to go and drive or gather them, so that the number cannot be reckoned which perished in the ditches in every district, for lack of herdsmen; for there was such a lack of servants that no one knew what he ought  
10 to do; . . . In the following autumn no one could get a reaper for less than 8d. with his food, a mower for less than 12d. with his food. Wherefore many crops perished in the fields for want of some one to gather them; but in the pestilence year, as is above  
15 said of other things, there was such abundance of all kinds of corn that no one much troubled about it.

. . . . .  
Master Thomas of Bradwardine was consecrated by the pope archbishop of Canterbury, and when he returned to England he came to London, but  
20 within two days was dead. He was famous beyond all other clerks in the whole of Christendom, especially in theology, but likewise in the other liberal sciences. At the same time priests were in such poverty everywhere that many churches were  
25 widowed and lacking the divine offices, masses, matins, vespers, sacraments, and other rites. A man could scarcely get a chaplain under £10 or 10 marks to minister to a church. And when a man

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could get a chaplain for five or four marks or even for two marks with his food when there was an abundance of priests before the pestilence, there was scarcely any one now who was willing to accept  
5 a vicarage for £20 or 20 marks; but within a short time a very great multitude of those whose wives had died in the pestilence flocked into orders, of whom many were illiterate and little more than laymen, except so far as they knew how to read, although  
10 they could not understand.

Cowhides were at the low price of 12*d.*, a pair of shoes for 10*d.*, 12*d.*, or 14*d.*, and a pair of boots for three or four shillings. Meanwhile the king sent proclamation into all the counties that reapers and  
15 other laborers should not take more than they had been accustomed to take, under the penalty appointed by statute. But the laborers were so lifted up and obstinate that they would not listen to the king's command, but if any one wished to have them  
20 he had to give them what they wanted, and either lose his fruit and crops, or satisfy the lofty and covetous wishes of the workmen. And when it was known to the king that they had not observed his command, and had given greater wages to the  
25 laborers, he levied heavy fines upon abbots, priors, knights, greater and lesser, and other great folk and small folk of the realm, of some 100*s.*, of some 40*s.*, of some 20*s.*, from each according to what he could give. He took from each carucate of the realm

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20s., and, notwithstanding this, a fifteenth. And afterward the king had many laborers arrested, and sent them to prison; many withdrew themselves and went into the forests and woods; and those who  
5 were taken were heavily fined. Their ringleaders were made to swear that they would not take daily wages beyond the ancient custom, and then were freed from prison. And in like manner was done with the other craftsmen in the boroughs and vil-  
10 lages. . . .

After the aforesaid pestilence, many buildings, great and small, fell into ruins in every city, borough, and village for lack of inhabitants; likewise many small villages and hamlets became desolate,  
15 not a house being left in them, all having died who dwelt there; and it was probable that many such villages would never be inhabited. In the winter following there was such a want of servants in work of all kinds, that one would scarcely believe that  
20 in times past there had been such a lack. The cattle and flocks which a man had wandered about everywhere without pasture, and everything which a man had was without care. And so all necessities became so much dearer that what in times  
25 past had been worth a penny was then worth 4*d.* or 5*d.*

Magnates and lesser lords of the realm who had tenants made abatements of the rent in order that the tenants should not go away on account of the

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want of servants and the general dearness, some half the rent, some more, some less, some for two years, some for three, some for one year, according as they could agree with them. Likewise, those who  
5 received of their tenants day work throughout the year, as is the practice with villeins, had to give them more leisure, and remit such works, and either entirely to free them or give them an easier tenure at a small rent, so that homes should not be every-  
10 where irrecoverably ruined, and the land everywhere remain entirely uncultivated. And all victuals and necessities of every sort became very dear.

5. *Royal Writ in behalf of John de Paddebury.* 1350.  
(*Calendar of Patent Rolls, 1348-1350*, p. 563.)

15 Whereas the king lately leased to his yeoman John de Paddebury and to Henry de Solihull, now deceased, the fee of his seal for writs judicial in the Common Bench for ten years, at a farm to be rendered at the exchequer yearly; in consideration of  
20 the mortal pestilence of men which lately prevailed everywhere in England to such an extent that there was no concourse of men at the Bench as usual, whereby the fee amounted to very little, the king has pardoned to the same John both the farm from  
25 the time of the said grant to him and Henry down to the time when the seal passed into the hands of Anthony Bache, by the king's grant, and all arrears of such farm, and has pardoned him also those twenty marks which he received from Walter de Weston



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in the siege of the castle of Dunbarre, in Scotland, for 260 sheaves of arrows at York and Newcastle-upon-Tyne and the expenses of bringing the same to Dunbarre.

- 5 6. *Ordinance of Laborers*. 1349. (Latin text and translation in *Statutes of the Realm*, I, 307, 308.)

The king to the sheriff of Kent, greeting. Be-  
cause a great part of the people, and especially of  
10 workmen and servants, late died of the pestilence,  
many seeing the necessity of masters, and great  
scarcity of servants, will not serve unless they may  
receive excessive wages, and some rather willing to  
beg in idleness, than by labor to get their living;  
15 we, considering the grievous incommodities, which  
of the lack especially of ploughmen and such labor-  
ers may hereafter come, have upon deliberation and  
treaty with the prelates and the nobles, and learned  
men assisting us, of their mutual counsel ordained:  
20 That every man and woman of our realm of  
England, of what condition he be, free or bond, able  
in body, and within the age of threescore years, not  
living in merchandise, nor exercising any craft, nor  
having of his own whereof he may live, nor proper  
25 land, about whose tillage he may himself occupy,  
and not serving any other, if he in convenient ser-  
vice, his estate considered, be required to serve, he  
shall be bounden to serve him which so shall him  
require; and take only the wages, livery, meed, or

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salary, which were accustomed to be given in the places where he oweth to serve, the twentieth year of our reign of England, or five or six other common years next before. Provided always, that the lords  
5 be preferred before other in their bondmen or their land tenants, so in their service to be retained; so that nevertheless the said lords shall retain no more than be necessary for them; and if any such man or woman, being so required to serve, will not the  
10 same do, that proved by two true men before the sheriff or the constables of the town where the same shall happen to be done, he shall anon be taken by them or any of them, and committed to the next gaol, there to remain under strait keeping, till he  
15 find surety to serve in the form aforesaid.

Item, if any reaper, mower, or other workman or servant, of what estate or condition that he be, retained in any man's service, do depart from the said service without reasonable cause or license,  
20 before the term agreed, he shall have pain of imprisonment. And that none under the same pain presume to receive or to retain any such in his service.

Item, that no man pay, or promise to pay, any  
25 servant any more wages, liveries, meed, or salary than was wont, as afore is said; nor that any in other manner shall demand or receive the same, upon pain of doubling of that, that so shall be paid, promised, required, or received, to him which

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thereof shall feel himself grieved, pursuing<sup>1</sup> for the same; and if none such will pursue, then the same to be applied to any of the people that will pursue; and such pursuit shall be in the court of the lord  
5 of the place where such case shall happen.

Item, if the lords of the towns or manors presume in any point to come against this present ordinance either by them, or by their servants, then pursuit shall be made against them in the counties, wapen-  
10 takes, tithings, or such other courts, for the treble pain paid or promised by them or their servants in the form aforesaid; and if any before this present ordinance hath covenanted with any so to serve for more wages, he shall not be bound by reason of  
15 the same covenant, to pay more than at any other time was wont to be paid to such person; nor upon the said pain shall presume any more to pay.

Item, that saddlers, skinnners, white-tawers, cordwainers, tailors, smiths, carpenters, masons, tilers,  
20 [shipwrights], carters, and all other artificers and workmen,<sup>2</sup> shall not take for their labor and work-

<sup>1</sup> In the sense of pursuing a remedy at law.

<sup>2</sup> This and other passages in both Ordinance and Statute show that there were many important classes of money-paid laborers besides  
25 the agricultural laborers—classes which were perfectly well known and taken for granted by the government. The space limits of this *problem* have prohibited the inclusion of documents to show the historical antecedents of these men. But the same money economy which fostered paid labor on the manors had been bringing forth  
30 in abundance the artisans and craftsmen of the towns. The villeins, mentioned above, who ran away to the towns had recruited this class. In connection with the present study, it is important to

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manship above the same that was wont to be paid to such persons the said twentieth year, and other common years next before, as afore is said, in the place where they shall happen to work; and if any  
3 man take more, he shall be committed to the next gaol, in manner as afore is said.

Item, that butchers, fishmongers, hostellers, brewers, bakers, pulters,<sup>1</sup> and all other sellers of all manner of victual, shall be bound to sell the same victual  
10 for a reasonable price, having respect to the price that such victual be sold at in the places adjoining, so that the same sellers have moderate gains, and not excessive, reasonably to be required according to the distance of the place from whence the said  
15 victuals be carried; and if any sell such victuals in any other manner, and thereof be convict in the manner and form aforesaid, he shall pay the double of the same that he so received, to the party damaged, or, in default of him, to any other that will  
20 pursue in this behalf: and the mayors and bailiffs of cities, boroughs, merchant-towns, and others, and of the ports and places of the sea, shall have power to inquire of all and singular which shall in any thing offend the same, and to levy the said pain  
25 to the use of them at whose suit such offenders shall be convict; and in case that the same mayors or

distinguish between those who were not to sell their labor for more than the fixed sum, and those who were limited in what they might charge for the wares which their labor produced.

30 <sup>1</sup> Poulterers.

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bailiffs be negligent in doing execution of the premises, and thereof be convict before our justices, by us to be assigned, then the same mayors and bailiffs shall be compelled by the same justices to pay the treble  
5 of the thing so sold to the party damnified, or to any other in default of him that will pursue; and nevertheless toward us they shall be grievously punished.

Item, because that many valiant beggars, as long as they may live of begging, do refuse to labor,  
10 giving themselves to idleness and vice, and sometime to theft and other abominations; none upon the said pain of imprisonment shall, under the color of pity or alms, give any thing to such, which may labor, or presume to favor them toward their de-  
15 sires, so that thereby they may be compelled to labor for their necessary living.

We command you, firmly enjoining, that all and singular the premises in the cities, boroughs, market towns, seaports, and other places in your bailiwick,  
20 where you shall think expedient, as well within liberties as without, you do cause to be publicly proclaimed, and to be observed and duly put in execution as aforesaid; and this by no means omit, as you regard us and the common weal of our realm,  
25 and would save yourself harmless. Witness the king at Westminster, the 18th day of June. By the king himself and the whole council.

Like writs are directed to the sheriffs throughout England.

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The king to the reverend father in Christ W. by the same grace bishop of Winchester, greeting. "Because a great part of the people," as before, until "for their necessary living,"<sup>1</sup> and then thus:  
5 And therefore we entreat you that the premises in every of the churches, and other places of your diocese, which you shall think expedient, you do cause to be published; directing the parsons, vicars, ministers of such churches, and others under you,  
10 to exhort and invite their parishioners by salutary admonitions, to labor, and to observe the ordinances aforesaid, as the present necessity requireth: and that you do likewise moderate the stipendiary chaplains of your said diocese, who, as it is said, do now  
15 in like manner refuse to serve without an excessive salary; and compel them to serve for the accustomed salary, as it behooveth them, under the pain of suspension and interdict. And this by no means omit, as you regard us and the common weal of our  
20 said realm. Witness, etc., as above. By the king himself and the whole council.

Like letters of request are directed to the several bishops of England, and to the keeper of the spiritualties of the archbishopric of Canterbury, during  
25 the vacancy of the see, under the same date.

7. *Statute of Laborers*. 1351. (French text and translation in *Statutes of the Realm*, I, 311-313.)

<sup>1</sup> The complete text of the Ordinance is thus indicated.

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Whereas late against the malice of servants, which were idle, and not willing to serve after the pestilence, without taking excessive wages, it was ordained by our lord the king, and by the assent of the prelates, nobles, and other of his council, that such manner of servants, as well men as women, should be bound to serve, receiving salary and wages, accustomed in places where they ought to serve in the twentieth year of the reign of the king that now is, or five or  
10 six years before; and that the same servants refusing to serve in such manner should be punished by imprisonment of their bodies, as in the said statute is more plainly contained: whereupon commissions were made to divers people in every county to in-  
15 quire and punish all them which offend against the same: and now forasmuch as it is given the king to understand in this present parliament, by the petition of the commonalty, that the said servants having no regard to the said ordinance, but to their ease  
20 and singular covetise, do withdraw themselves to serve great men and other, unless they have livery and wages to the double or treble of that they were wont to take the said twentieth year, and before, to the great damage of the great men, and impover-  
25 ishing of all the said commonalty, whereof the said commonalty prayeth remedy: wherefore in the said parliament, by the assent of the said prelates, earls, barons, and other great men, and of the same commonalty there assembled, to refrain the malice of

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the said servants, be ordained and established the things underwritten:

First, that carters, ploughmen, drivers of the plough, shepherds, swineherds, deies,<sup>1</sup> and all other  
5 servants, shall take liveries and wages, accustomed the said twentieth year, or four years before; so that in the country where wheat was wont to be given, they shall take for the bushel ten pence, or wheat at the will of the giver, till it be otherwise  
10 ordained. And that they be allowed to serve by a whole year, or by other usual terms, and not by the day; and that none pay in the time of sarcling<sup>2</sup> or hay-making but a penny the day; and a mower of meadows for the acre five pence, or by the day  
15 five pence; and reapers of corn in the first week of August two pence, and the second three pence, and so till the end of August, and less in the country where less was wont to be given, without meat or drink, or other courtesy to be demanded, given, or  
20 taken; and that such workmen bring openly in their hands to the merchant-towns their instruments, and there shall be hired in a common place and not privy.

Item, that none take for the threshing of a quarter  
25 of wheat or rye over 2*d.* ob.<sup>3</sup> and the quarter of barley, beans, pease, and oats, 1*d.* ob. if so much were wont to be given; and in the country where it is used to reap by certain sheaves, and to thresh by

<sup>1</sup> Dairy-maids.

<sup>2</sup> Hoeing.

<sup>3</sup> Two and a half pence.



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certain bushels, they shall take no more nor in other manner than was wont the said twentieth year and before; and that the same servants be sworn two times in the year before lords, stewards, bailiffs, and constables of every town, to hold and do these ordinances; and that none of them go out of the town, where he dwelleth in the winter, to serve the summer, if he may serve in the same town, taking as before is said. Saving that the people of the counties of Stafford, Lancaster and Derby, and people of Craven, and of the marches of Wales and Scotland, and other places, may come in time of August, and labor in other counties, and safely return, as they were wont to do before this time: and that those, which refuse to take such oath or to perform that that they be sworn to, or have taken upon them, shall be put in the stocks by the said lords, stewards, bailiffs, and constables of the towns by three days or more, or sent to the next gaol, there to remain, till they will justify themselves. And that stocks be made in every town for such occasion betwixt this and the feast of Pentecost.

Item, that carpenters, masons, and tilers, and other workmen of houses, shall not take by the day for their work, but in manner as they were wont, that is to say: a master carpenter 3*d.* and another 2*d.*; a master free-stone mason 4*d.* and other masons 3*d.* and their servants 1*d.* ob.; tilers 3*d.* and their

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knaves 1*d.* ob.; and other coverers of fern and straw 3*d.* and their knaves 1*d.* ob.; plasterers and other workers of mudwalls, and their knaves, by the same manner, without meat or drink, 1*s.* from Easter to Saint Michael; and from that time less, according to the rate and discretion of the justices, which should be thereto assigned: and that they that make carriage by land or by water, shall take no more for such carriage to be made, than they were wont the said twentieth year, and four years before.

Item, that cordwainers and shoemakers shall not sell boots nor shoes, nor none other thing touching their mystery, in any other manner than they were wont the said twentieth year: item, that goldsmiths, saddlers, horsesmiths, spurriers, tanners, curriers, tawers of leather, tailors, and other workmen, artificers, and laborers, and all other servants here not specified, shall be sworn before the justices, to do and use their crafts and offices in the manner they were wont to do the said twentieth year, and in time before, without refusing the same because of this ordinance; and if any of the said servants, laborers, workmen, or artificers, after such oath made, come against this ordinance, he shall be punished by fine and ransom, and imprisonment after the discretion of the justices.

Item, that the said stewards, bailiffs, and constables of the said towns, be sworn before the same justices, to inquire diligently by all the good ways

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they may, of all them that come against this ordinance, and to certify the same justices of their names at all times, when they shall come into the country to make their sessions; so that the same  
5 justices on certificate of the same stewards, bailiffs, and constables, of the names of the rebels, shall do them to be attached by their body, to be before the said justices, to answer of such contempts, so that they make fine and ransom to the king, in case they  
10 be attainted; and moreover to be commanded to prison, there to remain till they have found surety, to serve, and take, and do their work, and to sell things vendible in the manner aforesaid; and in case that any of them come against his oath, and  
15 be thereof attainted, he shall have imprisonment of forty days; and if he be another time convict, he shall have imprisonment of a quarter of a year, so that at every time that he offendeth and is convict, he shall have double pain: and that the same justices, at  
20 every time that they come [into the country], shall inquire of the said stewards, bailiffs, and constables, if they have made a good and lawful certificate, or any conceal for gift, procurement, or affinity, and punish them by fine and ransom, if they be found  
25 guilty: and that the same justices have power to inquire and make due punishment of the said ministers, laborers, workmen, and other servants; and also of hostellers, harbergers,<sup>1</sup> and of those that

<sup>1</sup> Those who provide lodging.

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sell victual by retail, or other things here not specified, as well at the suit of the party, as by presentment, and to hear and determine, and put the things in execution by the exigend after the first *capias*,<sup>1</sup> if need be, and to depute other under them, as many and such as they shall see best for the keeping of the same ordinance; and that they which will sue against such servants, workmen, laborers, [and artificers], for excess taken of them, and they be thereof attainted at their suit, they shall have again such excess. And in case that none will sue, to have again such excess, then it shall be levied of the said servants, laborers, workmen, and artificers, and delivered to the collectors of the Quinzime,<sup>2</sup> in alleviation of the towns where such excesses were taken.<sup>3</sup>

8. *Writ Appointing Justices of Laborers.* 1356.  
(Latin text in Putnam, *The Enforcement of the Statutes of Laborers*, Appendix, pp. 24-25.  
Translation by the editor.)

<sup>1</sup> The *capias* was the writ in civil suits which ordered the taking into custody of the defendant. An *exigend* might follow an unsuccessful *capias*, and was the writ preliminary to outlawry, outlawry always being the measure of last resort against the party who could not be produced in court.

<sup>2</sup> The tax known as the "Fifteenth."

<sup>3</sup> The remainder of the Statute contains sundry detailed directions to sheriffs and justices, and a clause directing that "the said justices [of the peace] make their sessions in all the counties of England at the least four times a year," a practice which soon developed into Quarter Sessions.

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The king to his dear and faithful Robert Fraunceys and Thomas Adam of Ashbourne, greeting. Know that we have appointed you for the purpose of keeping and causing to be kept in the county of  
5 Derby, inside and outside the liberties, the ordinance and statute of laborers, artisans, and servants, (in all and singular their articles), which were made in our council and parliament recently held at Westminster for the common good of our king-  
10 dom of England; also to inquire about sheriffs, seneschals, bailiffs, ministers, and any others who, under color of said ordinance and statute, have arrested such laborers, artisans, and servants and then, by their own authority, freed them as a result  
15 of fines and ransoms appropriated to their own use, without having observed the regulations contained in said ordinance and statute; also to hear and determine according to the force and effect of said ordinance and statute everything which has been  
20 undertaken in said county (inside or outside the liberties) against the form of said statute and ordinance, either at our suit or that of any others who wish to prosecute or make complaint before you. Moreover, we have appointed you our justices to  
25 hear and, by a just fine, to determine all indictments and processes touching such laborers, artisans, and servants brought before our justices last assigned to this same county and not yet concluded. And therefore we command you to attend to all

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and singular the premises at a set day and place which you will provide for the purpose, and that you hear and determine these matters to the end of doing therein what pertains to justice according  
5 to the force and effect of the said ordinance and statute, saving to us the amercements and other things due to us thence. . . . Witness the King at Westminster, the tenth day of March. By the council.

10 Those named below have similar commissions in the counties and towns following, to wit:<sup>1</sup> . . .

9. *Proceedings before the Justices of Laborers.* 1355; 1358. (Latin text in Putnam, *Enforcement of the Statutes of Laborers*, Appendix, pp. 174,  
15 175; 152-154. Translation by the editor.)

a. Hereford. [1355.]

The jurors make presentment to the effect that John Monyword of Hereford, weaver, took from John Spicer of the same [county] an excess charge  
20 for his work in the twenty-eighth year [of the reign], to wit, 2-1/2*d.* for an ell, and that he is a common taker of excess. . . .

Nicholas Webbe, weaver, Robert Plassh, weaver, [eight other weavers] took more for their work,  
25 against the ordinance, etc.,<sup>2</sup> than they were accustomed to take in the twentieth and twenty-first

<sup>1</sup> This commission was sent to "11 counties, 12 towns, 18 liberties, 1 group of wapentakes."—Putnam, *op. cit.*, Ap., p. 41.

<sup>2</sup> In this and similar connections the *et cetera* indicates that the  
30 full formal or legal phraseology has been curtailed.

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years of the reign of King Edward III., and they are common and notorious takers of excess.

[One hundred and two other individuals are presented for similar offenses, representing the following  
5 occupations: carpenter, plasterer, spinster, common laborer (male and female), kempster, knitter (?), day-laborer, water-carrier (female), carder, servant bound for three years, weaver (male and female), huckster, tailor, furbisher, mower, thresher, furrier, dressmaker,  
10 reaper (female), parchment-maker, glover, fuller, tiler.] <sup>1</sup>

Hence the sheriff was ordered to cause all the above-named artisans, laborers, and servants to come before us here the following Tuesday to answer to the lord king for their said excess charges and  
15 trespasses. And all the weavers, fullers, and carpenters came of their own accord, and on being asked how they wished to acquit themselves of the excesses and trespasses charged against them as appear above, they did not deny the excesses, but  
20 sought admittance to the lord king's grace. And they were allowed to pay fine, etc. Pledges of the fines. . . .

[Five pledges are named; then follow the sums of the fines of 43 delinquents, beginning with John Mony-  
25 word, 10s.; half mark, 5s., 2s., 5s., 40d., 12d., 15d., 3s., 3s., 2s., 2s., half mark, 3s., 40d., 40d., 3s., 3s., 2s., 6d., 6d., 6d., 40d., 18d., 2s., 2s., 12d., 2s., 12d., 2s.,

<sup>1</sup> This is Miss Putnam's summary, except that the editor has attempted to translate the names of the occupations.

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12d., 4s., 40d., half mark, 4s., 8s., 12d., 4s., 8s., half mark, 8s., 12d., 3s.]<sup>1</sup>

b. Thursday [Cornwall. 1358.]

The jurors make presentment to the effect that  
5 John Clegh Jr., Nichola Karn, Dionisia Trethak, Thomas Tremenhir, Johanna Nichol, Richard Gorb-  
ben, John Coly [*sixteen other names*], John Sebill, tailor, John Henri [*thirty-one other names*], John, a  
servant of Henry Nanfan, Richard Polgrim [*five*  
10 *other names*], John, a servant of Thomas Mewes, took excessive wages, prices, and profits in their  
divers works and wares against the form of the lord king's statute, etc. Hence the sheriff was com-  
manded to attach them against Friday at Penryn,  
15 that they then be before the said justices, etc. . . .  
Friday.

The sheriff answered that the said John Clegh, Nichola Karn, and all the others named above had  
been individually attached by their separate plevins.<sup>2</sup>  
20 . . . The said John Clegh Jr., Nichola Karn, Dionisia Trethak, and Thomas Tremenhir did not come.  
Therefore their pledges in mercy, etc. And the sheriff was commanded to arrest them against  
Saturday next at Helleston before the said justices,  
25 etc. And the said Johanna Nichol, Richard Gorb-  
ben, John Coly, and the others named above came  
and said that they were not guilty of that which  
the said jurors presented above, and placed them-

<sup>1</sup> Miss Putnam's summary.

<sup>2</sup> Pledges or warrants.



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selves upon their country, etc. Therefore the sheriff was ordered to cause twelve [jurors] to come to Helleston, etc., the next Saturday before the said justices, etc. . . .

5 Saturday.

The sheriff answered that the said John Clegh Jr., Nichola Karn, Dionisia Trethak, and Thomas Tremenhir had been arrested and were in custody. Who, being required, came; and, asked about the  
10 aforesaid presentment, said that they were not guilty and put themselves on their country etc., as the said Johanna Nichol, Richard Gorben, John Coly, and the other their above-named associates had done. Hence the sheriff was commanded forth-  
15 with to summon twelve, etc., to make a jury, etc. The jurors drawn, selected, and sworn on behalf of the lord king and the aforesaid parties acquitted the said John Clegh, Nichola Karn, Dionisia Trethak, and Thomas Tremenhir of the excesses and  
20 trespasses presented above. Therefore let them go quit etc. And the said Johanna Nichol, Richard Gorben, John Coly, and the other their above-named associates were found guilty. Therefore they were summoned and made fine as appears in the estreats<sup>1</sup>  
25 sent to the king's exchequer.

<sup>1</sup> Certified lists of fines.



## PROBLEM V

V.—Freedom of Speech Under Elizabeth and  
the Stuarts



# Freedom of Speech Under Elizabeth and the Stuarts

## I. THE HISTORICAL SETTING OF THE PROBLEM

IN the history of Parliamentary liberties freedom of speech makes about the longest story.<sup>1</sup> One of the first rights assumed, it was almost the last important right to be won. Only a short while after there began to be such a term as Parliament, and almost a century before the institution to which that term was applied had taken on regular form, there emerged the notion that members of that body should have something like freedom of speech. When the magnates in 1237 "withdrew to a private place to consult" and discuss measures in the absence of the King, they were asking for liberty of debate. That liberty was unlikely to be denied them for several reasons. They would probably not be checked in any way so long as they talked in most part about

<sup>1</sup> This sketch is based chiefly upon the rolls of Parliament, with some examination of such chronicles as were available. If it is fuller on the beginnings of privilege than on its later history, it is because an understanding of the early precedents is necessary for any just comprehension of the later struggle. The paper is necessarily neither complete nor final. The subject has, however, been dealt with quite too briefly in constitutional histories, and in the main their treatments do not afford an adequate background for a judgment of Elizabeth's and James's policy in the matter.

## Source Problems in English History

money, so long as their principal business was to grant what the King wished. They were the more unlikely to be checked because the distinction between the lords who belonged to Parliament and those who belonged to the Council was so slow in becoming fixed. Not until the Upper House was a definite body quite cut off from the Council was there any need of a right to speak freely. Such a right belonged naturally to councilors. What was said in Council by way of criticism of administration was advice; what was said in another place might be regarded as censure. And even when the Lords had become a separate body their utterances as members of the Upper House were not likely to raise royal objection. Opposition on their part would be so serious that they would not venture to oppose the sovereign except when they could present a united front. Hence the question of free speech seldom arose in the Upper House. As for the Commons, they pulled so weak an oar that the King might not deem them worth calling to account.

There was no reason then why freedom of speech should become an issue in the early history of Parliament. No question was raised about it. It was not probable that it would be denied or asserted in the face of denial until new conditions arose. In the reign of Richard II. and Henry IV. those new conditions appear. The long factional strife between almost evenly balanced forces which begins in the closing years of Edward III. and closes only with the death of Henry IV. was peculiarly fitted for the development of a less obvious right such as freedom of speech. It was a time when to-day's leader might prove to-morrow's victim at Smithfield. What was said in Parliament might prove treason unless guarded by privilege. A second condition was the discontent arising from heavy taxes. Edward III.'s wars cost money

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2. which the "poor Commons" found it hard to pay, but had to keep right on paying through the reign of Richard II. When there are heavy taxes to pay, all things look dark to those who have to vote them, and the fault is believed to lie necessarily with the administration. The complaints and delay of the Commons were sure to provoke royal resentment. A third condition was the evolution of Parliamentary machinery. A clerk appears early in the fourteenth century and a spokesman of the Commons before the middle of the century; elementary forms of procedure begin to become regular. With the evolution of offices and forms privileges were sure to follow. A fourth condition was the enforced subordination of Henry IV. to his Parliament, a result of the manner of his accession and of other causes which cannot briefly be explained.

Such conditions were likely to breed some notion of free speech. That notion is first to be seen in the opposition to the King's assumption that the Commons must discuss only those matters laid before them, an assumption particularly characteristic of Richard's rule. Parliament had just reached that point where the right of petition was beginning in some degree at least to be a right of initiation.<sup>1</sup> Hence when Richard's chancellors again and again told the knights and burgesses to stick to their business and not to meddle with "foreign matters"—*i. e.*, matters other than those laid before them—there was natural disappointment. The King wished them not to meddle because he wished money at once and because he had not been used to meddling. He was so vexed with them<sup>2</sup> that in 1387 he appealed to the

<sup>1</sup> *I. e.*, of initiating laws, rather than merely passing those proposed to them.

<sup>2</sup> Richard had been stirred in special degree by the attack of Parliament on Michael de la Pole, in 1386.

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judges. Had Parliament a right, he asked, when the King had assigned certain subjects for discussion, to neglect those matters and deal with others? The judges answered the King as he wished, that Parliament ought not to diverge from the program set before it. By a judicial decision the King had stopped the Commons' interference. That decision, reversed in 1388, reaffirmed in 1397, was finally quashed at the beginning of Henry IV.'s reign. From that time on it remained settled that Parliament need not hold fast to a set plan of action. Indeed, in the very reign of Henry IV. (1406) the words of the Commons seemed to carry the theory of independent action further. When they learned that the King was hurt because they "had talked otherwise than they ought about his royal person" they sent word through the Speaker begging to be excused and declaring that they had "neither said nor done anything concerning the royal person in any other way than loyal lieges ought to do and talk for the honor and advantage of our lord the King and of his whole realm." Not only could they talk as they liked about matters in general, they seemed to say, but it might be their duty to discuss the affairs of the royal person. Had they meant as much as that, had they understood the implications of what they said, or lived up to them, these words might have been a significant starting-point. That they did not understand is clear from the course of after events.

The notion of free speech also reveals itself in the growth of the idea that the King should hear from Parliament only through approved channels. In 1376 Parliament had provided that in the Council chosen members should report to the King what was going on, and only they. The distinction between the Council and the Upper House was then so recent that the notion of such



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a principle of action as to the Council suggests a similar principle as to Parliament. And indeed there is a bit of evidence in the very same year that the members of the Commons thought they had a right to be heard by the King only through their Speaker. They considered at some length who should be their Speaker. "Careful they were, . . . for they doubted certain of the King's secretaries, who, they thought, would have disclosed their drifts, for that they were captious and in great and special favor with the King."<sup>1</sup> The consciousness of such a right comes out again in the poem, "Richard the Redeless," ascribed to William Langland and written in the year of Richard's deposition. Some members of Parliament, he tells us—for he has been discussing Parliament—were tattlers, and went to the King and told him who were his friends and who were his foes, men who for their speeches deserved well. Two years later the principle was more definitely recognized when Henry IV. declared, in answer to the Commons' request through Speaker Savage, that it was his will that the Commons should have deliberation and advice, and that he would not hear or give credence to people who for their own advancement informed him ahead of time of what had been determined in Parliament.<sup>2</sup>

<sup>1</sup> Stow's translation of the St. Albans Chronicle, *Archæologia*, XXII., 213.

<sup>2</sup> In 1407, when the Commons stood out for their right of initiation of money grants, their words touched freedom of speech. "It is lawful," they said, "for the Lords to discuss among themselves assembled . . . in the absence of the King concerning the estate of the realm and the remedy needful to it. And that in like manner it is lawful for the Commons on their part. . . ." Of the earlier history of money grants an interesting account could be written, and such an account would reveal several examples of the notion that discussion should be independent of the King.

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The notion shows itself, thirdly, in the Speaker's demand for himself and for the Commons of certain definite immunities. Such a demand was sure to come soon after a speaker appeared. The first recorded protestation belongs to 1377. In that year Peter de la Mare declared that what he had to say he would say not of his own initiative, but on the motion, assent, and expressed wish of all the Commons there present, and if he should happen to say anything not by the assent of his companions he asked that it should be amended by them before he left Parliament. The *raison d'être* of this protestation is easily seen. De la Mare had spent the best part of two years in prison for what he and his associates had said and done in the Good Parliament. He was taking no chances.<sup>1</sup> This protestation was merely a measure of self-protection. The protestation of 1378 was a good deal more. Speaker Pickering asked in behalf of the Commons that if he should say anything which was to the prejudice, damage, slander, or hurt of the King, of his crown, or to the diminution of the honor and position of the Lords, it should be regarded as not having been said.<sup>2</sup> In 1397 the protestation was entered upon the rolls, and in 1399 in the first Parliament of Henry IV.'s reign Speaker Cheyne added to the wording of his request the sentence, "And that they [his com-

<sup>1</sup> But the phrasing of the statement (Rot. Parl. III, 5) suggests that this was by no means the first protestation.

<sup>2</sup> Space forbids tracing the history of protestation. In 1379 the Speaker asked that if he should say or do anything to the displeasure of our lord the King the Commons were not to be held responsible. Speaker Bussy in 1397 asked to be excused if he should say anything to the displeasure of the King or against his royal estate or regal power, words which suggest that the protestation was phrased with some regard to the situation at that time.

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panions] should have their liberty in Parliament as before this time." <sup>1</sup>

The conception of free speech comes out also in the opposition raised to the punishment by the King of members for what they said in Parliament. The earliest instance of anything like this is the well-known case of Peter de la Mare, already adverted to. Peter was the Speaker of the Good Parliament, and as leader of the knights who were leagued with the Black Prince, had gained the ill-will of the Court, of John of Gaunt, Duke of Lancaster, and of the militant Alice Perrers, mistress of Edward III. When the Good Parliament had adjourned and the Black Prince had gone to his reward, the reactionaries, as we should call them to-day, took charge. De la Mare was shut up in prison. Now it will not do to say that De la Mare was confined only for what he had said.<sup>2</sup> Rather it was for what he had said and done. Indeed, it is more nearly true to say that in the struggle, which amounted almost to civil war, one faction had got the upper hand and naturally put the leaders of the other in prison. What is interesting is that in the reactionary Parliament that met just after De la Mare's imprisonment there were a few members who sought for his liberation, "since the said Peter was ready to answer

<sup>1</sup> In 1410 the King, in answer to the Speaker's protestation, asked the Commons not to do anything or talk in any way which would not be honorable or would not promote the good feeling and unity of all parties. In the next year when the Speaker made his protestation Henry granted him "his liberty as in past times," but went on to say that he did not wish any "novellerie" in this Parliament, but to be as free as his ancestors. Evidently Henry was wary, as Elizabeth later, of granting too much.

<sup>2</sup> But it is interesting that the St. Albans Chronicle says: "And so a good and innocent man . . . since he did not wish to cover up the truth, was greatly wronged."—*Chronicon Angliæ*, p. 105.

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all things objected against him in the presence of the lords who had come to Parliament." Is it possible that De la Mare's friends were making the point that for what he had said in Parliament he could be tried only there? Such a conception was later to prove no small defense of free speech.

Whatever the significance of the De la Mare case, the objections to royal interference appear clearly in 1386 and 1388. In the earlier year Parliament, alarmed at rumors of royal plots against its safety, addressed the King. The members declared that they ought to be called together once a year "into the highest court, in which all calmness ought to shine forth without any anxiety . . . in order to reform the abuses of the kingdom"<sup>1</sup> . . . and with wholesome discussion dispose and foresee how the burdens of the kingdom could be supported.<sup>2</sup> In 1388 when the Lords Appellant were in the saddle they made the charge that certain men whom they named—the opposition party—had caused the King to drive away from his Council and from Parliament such men as moved for good government, until those men no longer dared to speak of the matter nor to discuss the question of good government.<sup>3</sup>

Richard had appealed to the judges in 1387 for a ruling.

<sup>1</sup> After that Parliament had adjourned, the King called the judges together at Nottingham, as already mentioned, and among the questions put to them asked one that has a bearing in this connection. Ought men to be punished, he inquired, who proposed in Parliament to send for the statute concerning the deposition of Edward II. Such men, the judges replied, were traitors. Their ruling, like that already mentioned reversed and reaffirmed, was annulled with the accession of Henry IV.

<sup>2</sup> Knighton, II, 217.

<sup>3</sup> The Lords Appellant further blamed the King for staying away from Parliament until he was assured that certain men would cease talking against his favorites.

## Freedom of Speech

What he did in 1397 in the Haxey case was much the same, save that it was a question of punishing speech rather than of divergence from program. He had been angered at the beginning of the session when he heard of efforts to rouse the Commons against the proposed expedition to aid the King of France. He was more indignant when he learned that the Commons had discussed four questions which concerned his "*regalie et roial estat et liberte*." On the matter of the four points he addressed the Lords, complaining in particular of the fourth in which the expenses of the King's household had been censured. He was grieved "that the Commons who are his lieges should mistake or presume on any ordinance of government of the King or of his household." He wished his opinion communicated to the Commons and asked Lancaster to find out from the Speaker who had presented the bill. The guilt was put upon Thomas Haxey, a clergyman. The Commons apologized humbly enough, "recognizing well that such matters do not belong at all to them, but only to the King and to his ordaining." All that they intended was that the Lords should ask the King to consider his estate and do what was pleasing to him. Richard then procured a judgment by the Lords that if any one moved or stirred up the Commons to make a remedy of reform or anything touching our government or regality he should be deemed a traitor. He was carrying a court ruling a step further than in 1387, and was giving to it the weight of Parliament. Haxey was tried by Parliament and condemned. Early in Henry IV.'s reign the judgment was reversed—Haxey had been pardoned meantime—and it was declared that Haxey's condemnation had been against law and practice hitherto used in Parliament, in derogation of the customs of the Commons.

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Clearly the conception of a Parliamentary right of free speech had made progress in the reigns of Richard II. and Henry IV. And yet the sum total of evidence is disappointing. It would be hardly worth recording and analyzing in this brief setting were it not that these early notions and precedents, however vague they seem to us, were to be much used by the protagonists of privilege at a later time. Strong bulwarks of liberty have sometimes been erected on slight foundations. The truth is that in the late fourteenth and early fifteenth centuries Parliament was so little aware of its possible powers that it did not conceive clearly the dangers besetting it. In all the thirty or so charges drawn up against Richard II. by a government that wished to find as many as possible, a list that embodies pretty accurately the constitutional conceptions of the time, both as to the right of the subject and of Parliament, there is no statement of Richard's repeated interferences with free speech in Parliament, save in a slight allusion to the "threats and terrors"<sup>1</sup> used to overawe the Shrewsbury Parliament of 1397.<sup>2</sup> Not a word is said or implied about the wrong done to Haxey. With all the seeming progress in clarifying the notion, old as Parliament, that discussion should be independent of the King, no method of securing members against royal imprisonment for what they said had been developed, no custom of asking for the liberation of members so imprisoned had been established, and no probability that such wrongs would be righted—unless a sud-

<sup>1</sup> This was mentioned in a paragraph chiefly devoted to an attack upon Richard's methods of controlling elections to Parliament.

<sup>2</sup> That the King had forced the judges to give opinions contrary to their intentions was, however, put down as an evidence of his unconstitutional government. Those opinions, of course, included two items, as we have seen, that concerned freedom of speech.

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den shift of parties or kings took place—could be asserted. It was almost as likely at the end of Henry IV.'s reign as at any earlier time that if members said what the King did not like they would have reason to regret it.

How little conception of a constitutional principle there was is best shown by a consideration of the period of nearly a century and a half that follows. Parliament had resisted the royal claim that it should stick to the business set before it. But it can be abundantly proved that in the fifteenth and early sixteenth centuries Parliament continued to hold fast to the program set before it. And it was very far indeed from presuming to deal with matters that concerned the King's person. The notion that the King should get all his knowledge of what was going on through official channels was so nearly lost in the fifteenth and sixteenth centuries that its violation occasioned little notice.<sup>1</sup> As for the Speaker's request at the beginning of the session, it ceased to carry the significant words of the early requests and became almost a meaningless formula in behalf of the Speaker's safety. The raising of objections to interference with speech in Parliament was unnecessary in the century that followed Henry IV. because the King had so little reason to complain.

A few cases in the long period from Henry IV. to the beginning of Elizabeth must nevertheless be touched upon. That of Thomas Yonge is classical. Yonge asked and received from Parliament restitution because he had been put in the Tower "for matters shown by him in the House." He stated that by the old liberty and freedom of the Commons of this land all members "ought to have their freedom to speak and say in the House of their assembly as to them is thought convenient and reason-

<sup>1</sup>For evidence that this notion was existent in the reign of Henry VIII. see Holinshed (London, 1806), III, 766.

## Source Problems in English History

able without any man's challenge or punishment therefore." These are good words, yet Yonge's privilege was claimed only because he happened to be on the winning side in one of the sudden turns of the Wars of the Roses. That his right was thought of is nevertheless evidence that earlier precedents had not been quite forgotten.

The case of Richard Strode, in the reign of Henry VIII. (1512), reveals the connection between the notion of free speech and the conception of Parliament as the highest court in the realm, the transactions in which were not to be disputed in any other court. Strode had introduced a bill into the Commons that affected Devonshire tinnerns. For that he was imprisoned by the Stannary Court, a court that had to do with the affairs of tinnerns. Thereupon Parliament declared that all suits against the said Richard "for any bill, speaking, reasoning, or declaring of any matters concerning the Parliament to be communed or treated of, to be utterly void and of none effect."<sup>1</sup> This was, of course, the assertion of the right of the high court of Parliament as against other courts to have jurisdiction over its own members for their dealings in Parliament.<sup>2</sup> Men were to be free for what they said in Parliament—from legal action in other courts. It was the action of the courts and not of the King that was guarded against. The King might imprison members for their speeches in Parliament, but he could not make use of the courts to do it.

Of Henry VIII.'s relation to Parliament everybody knows. That great bully manifested occasionally some

<sup>1</sup> Unfortunately the statute about Strode was so worded that there might be a reasonable doubt as to its general interpretation. Of this doubt judges were later to take full advantage.

<sup>2</sup> This aspect of free speech deserves a much fuller treatment than it can be given here.



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inclination to give Parliament consideration.<sup>1</sup> "The discussions in the English Parliament," he wrote the Pope, "are free and unrestricted. The crown has no power to limit their debates . . . they determine everything for themselves." Perhaps Henry believed that, but he knew very well that Parliament would do as he wished. The Spanish Ambassador wrote to Charles V. that for a Parliament member to have resisted the proposed legislation about Queen Katharine would have been worse than heresy.<sup>2</sup> Henry's message to Gostwick is well known. That Kentish knight had attacked Cranmer "openly in Parliament" for his preaching and reading in Kent. "Tell that varlet," the King sent word, "that if he do not acknowledge his fault unto my lord of Canterbury I will soon make him a poor Gostwick and otherwise punish him to the example of others." Gostwick acknowledged it.<sup>3</sup>

In 1542, so Elsynge tells us, the Speaker's petition for freedom of speech was first recorded. In the want of evidence at hand it may be conjectured that this was merely a slightly more definite statement of the customary protestation.<sup>4</sup> Prothero says that the first occasion

<sup>1</sup> *E. g., Hen. VIII., Letters and Papers*, X, No. 462.

<sup>2</sup> *Ibid.*, VII, 127. The Commons, in 1523, made a claim to freedom of speech. Cardinal Wolsey "came again into the Lower House and desired that he might reason with them that were against the demand (for a large grant), but he was answered that the order of that House was to hear and not to reason except among themselves."—Holinshed, III, 685.

<sup>3</sup> It must not be overlooked, of course, that the Tudor practice of appointing ministers from the Commons was likely to make discussion in the Lower House somewhat less frank than it might otherwise have been.

<sup>4</sup> The Speaker's request in 1523 was pretty definite. He asked pardon for any member who "might speak more largely than of duty he ought."—Holinshed, III, 682-683.

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when the three privileges—*i. e.*, access to the sovereign, freedom from arrest, and freedom of speech—were asked, was in 1554 in the reign of Mary. There are several indications that in the decade or so just before Elizabeth the notion of free speech was becoming clearer. Certainly there was actual discussion and difference of opinion in the Commons.

What was the importance of the principle of free speech when Elizabeth took the throne? Had freedom of speech been once secured and allowed to lapse, had it made great progress in an early and Parliamentary period only to be arrested by civil wars and Tudor despotism? Or had the principle never gained much headway, and the early precedents in favor of it been much less important than they afterward seemed? The whole series of events here sketched, as well as many related facts, incline one to the second view. The more one reads Tudor Parliamentary history the less reverence he has for the familiar dictum that the Constitution had been made by 1485,<sup>1</sup> the more he comes to suspect that much of Parliamentary liberty was won by Elizabethan and seventeenth-century orators who had a knack for weaving from thin Lancastrian threads thick cords to bind their kings. To one who goes over early Tudor records it looks very much as if Parliament were as yet largely a ratifying body. Certainly that seems to be the main function of the Commons. It is hard to escape the impression that their body, instead of having through new circumstances lost its pristine influence, never had had a great deal of influence. No increasing purpose to broaden freedom out from precedent to precedent runs through its records. What the members did was what they had been told to do, and they

<sup>1</sup> Of course on the side of the common law the Constitution was pretty well made by 1485.

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did it as if they had always been used so to do. They passed measures which had been initiated by members of the Council, examined by judges, and revised by "sage clerks." Sometimes the bishops had a finger, often a hand, in the proposed laws. It is true, of course, that the Commons had a right of initiation; but it was a right more honored in the breach than in the observance. The exercise of it on any important matter would have been regarded by the Tudor sovereigns as an encroachment upon their prerogatives. The actual discussions in the Commons, it may be imagined in the want of any large body of evidence on this point, had to do largely with money grants, a matter in which the Commons played a real part.<sup>1</sup> Upon other subjects they were no doubt encouraged to deliberate, so long as they followed the lead of the Councilors. They might sometimes amend measures. Indeed we find them in the reign of Edward VI. occasionally rejecting measures or being persuaded, not without difficulty, to pass them. But such cases seem unusual.

If such an interpretation should prove true at all, it will be seen that there would be little occasion to suppress free speech in the Commons and less reason for them to insist upon the privilege. And such an interruption would provoke questions about the course of free speech under Elizabeth and the Stuarts. When Peter Wentworth, Coke, and Phelips fought for the privilege, were they regaining old trenches or thrusting forward into new ones?

Upon freedom of speech depended the whole battle for Parliamentary liberty. No limitation of ordinance or proclamation, no insistence upon exact wording in the

<sup>1</sup> *E. g.*, see Holinshed, III, 685. See also *Hen. VIII., Letters and Papers*, III, No. 83.

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drafting of laws, none of the various forms of control by which Parliament was on its way to become a legislature, would avail if the King could curb the members' tongues. All that had been won, all the realization of limited monarchy to which Elizabethan political thinkers awakened, might go by the board if James and Charles could silence debate. The Kings of England might become what they sometimes wished to be, kings like those in France. Much was at stake in those debates between sovereign and Parliament. Wentworth and Strickland knew it, Coke knew it. Most of all perhaps Eliot knew it, dying in the Tower by slow degrees, unacclaimed, that a precedent might not be set at naught.

### II. INTRODUCTIONS TO THE SOURCES

#### PART A<sup>1</sup>

##### *Commons Journals.*

These need little discussion. They were based upon the notes taken by the clerk of the House, and upon copies of the motions, resolutions, petitions, etc., that were left with the clerk.

##### *Calendars of State Papers, Domestic.*

These calendars of the papers in the Public Record Office in London are arranged in chronological order and make up many volumes which are still coming out. The

<sup>1</sup> This discussion of the sources, the questions, and the sources themselves have been divided into Parts A and B, A covering Elizabeth, and B the Stuarts. This has been done to make possible the study of the problem in two parts, or the study of either part without the other. The student who takes up the second part without the first, however, is advised to read the Historical Setting at the beginning.

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earlier volumes were little more than lists, but the later ones have included very complete and almost satisfactory abstracts of the contents of each paper.

*Calendars of State Papers, Domestic, 1547-1580*, p. 283.

Here is listed a minute of the message to the House of Commons from the Queen. It has been transcribed in full for the editors from the Record Office in London. In that office it is listed as *Eliz. Vol. XLI. No. 30*.

*Calendars of State Papers, Foreign.*

These are translations, generally in full, of the letters (written in most cases from London) by the representatives of foreign governments. Their emphasis is of course upon diplomacy, and their accounts and comments upon English politics are not always of the greatest worth. Some of them, however, have caught the trick of English political ways and give many interesting lights upon political events. Those quoted in this problem may all be characterized as in the main trustworthy.

*Spanish Papers, 1558-1567*, pp. 594-603.

De Silva's narrative of Elizabeth's dealings with Parliament betrays close acquaintance with affairs in England. He was quite as much a political agent as an ambassador. The account quoted fits in well with what we know from other sources. It will be seen that De Silva had unusual opportunity to know the royal side of the story.

D'Ewes, Simonds, *Journal of all the Parliaments during the Reign of Queen Elizabeth*. (London, 1682.)

D'Ewes was a seventeenth-century antiquarian who put together from all available sources—little has ever been added—a compendious history of Parliamentary debates and proceedings in the reign of Elizabeth. He made elaborate and intelligent use of the journals of the clerk, a good part of which have since been lost (putting

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in corrections where necessary), of journals kept by individual members, of fragments of separate speeches which he had picked up, and of contemporary annals. Out of all these and in particular out of the clerk's journals he wove a combination text. In that text he was careful to show from what kind of material each part was drawn. So much that he put in would otherwise be lost that the obligation of historical students to his work is great. D'Ewes was a careful compiler and his record is as good as its originals, all of which were without doubt authentic reports.

Townshend, Heyward, *Historical Collections of the Last Four Parliaments of Queen Elizabeth*. (London, 1680.)

Townshend's journal up to 1597 is not his own, but is based upon a private journal with the additions of materials from the journals of the two Houses. From 1597 on the journal for the Commons is evidently a personal diary with other materials inserted. Its exact character, its relation to D'Ewes, and to the lost Commons Journal needs elucidation, but for our purpose it is enough to say that it is clearly authentic.

## PART B

### *Commons Journals.*

For a description of these see Part A.

### *Lords Journals.*

These journals, like those of the Commons, are based upon the clerk's notes and papers.

### *Calendars of State Papers, Domestic.*

For a general description of these calendars see Part A.

*Calendars of State Papers, Domestic, 1611-18*, pp. 236-237.

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The two letters briefed here record facts to be found in many places. John Chamberlain was not connected with the government, but wrote letters to his friend Carleton, who was English ambassador at Venice. Sir Ralph Winwood had just recently been made secretary of state.

*Calendars of State Papers, Domestic, 1619-23*, pp. 326-327.

The account of the King's coming to Council here quoted is probably a narrative prepared for publication by one of the secretaries. (See *Parliamentary History*, ed. 1751, V, 513-514.)

*Calendars of State Papers, Foreign.*

For general description of these calendars see Part A. *Venetian Papers, 1621-1623*, pp. 183-184.

Girolamo Lando's narrative is gossip but interesting. What he tells here is by no means improbable.

*The Parliamentary History* (London, 1806), is an eighteenth-century (first edition 1751) compendium in many volumes of the debates in Parliament. The speeches and papers are gathered with a wide net. Where possible the material quoted should be reduced to its original source. The Apology of the Commons here quoted is taken by the editors of the *Parliamentary History* from William Petyt's *Jus Parliamentarium*, a book about Parliament written by a seventeenth-century manuscript collector and antiquarian. We may be sure that his copy of the Apology was transcribed from an authentic copy of the original. If we were not sure, the Apology could be found in the *State Papers, Domestic*, James I., Vol. VIII, No. 70.

Cobbett's *State Trials* (London, 1809), is a collection of contemporary accounts, most of them made by court reporters, of important trials in English history.

## Source Problems in English History

*Parliamentary Debates in 1610.* Edited from the notes of a member of the House of Commons, by S. R. Gardiner (Camden Soc., 1862.) The original of this account is to be found in the British Museum, *Add. MS.*, 4210. It is much the fullest report of what happened in this session.

Sir Edward Nicholas, *Proceedings and Debates of the House of Commons in 1620 and 1621* (Oxford, 1766), 2 Vols. Nicholas, who was destined to play an important rôle in later reigns, was at this time secretary of the Lord Warden of the Cinque Ports and a young member of Parliament. He kept very full notes of what happened in Parliament, notes upon which rests most of our knowledge of the events in this session. The notes were published as anonymous, and it was not proved until the time of Gardiner that Nicholas wrote them.

*The Notes of the Parliament of 1626* are taken from photographs in the University of Minnesota Library, made from a diary in the possession of the Cambridge University Library. The diary, which is exceedingly detailed (270 closely written double pages), and which was seemingly written as the debates were in progress, was probably the work of Bulstrode Whitelocke. (See W. A. J. Archbold, *Eng. Hist. Rev.*, 1902, p. 703.) It is much the fullest account of an important Parliament.

- a. Sir Richard Grosvenor, *Notes of the Parliament of 1628.*
- b. *Borlase Manuscript of the Parliament of 1628.*
- c. *Rushworth Historical Collections.* (London, 1721.)

The editor has put together an account of the extraordinary debate on June 5, 1628, from three sources, using those sources in turn. Between them the three offer a somewhat better account than can be found in any one, although all have many points in common. Grosvenor's



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very detailed notes are taken from rotograph copies of the original, which is to be found in Trinity College, Dublin (E, 5. 33-36). They are rather disjointed and were evidently made during the progress of the debates, but they are obviously much more nearly verbatim than any of the other accounts and include many speeches to be found nowhere else. The Borlase Manuscript belongs to the British Museum (Stowe, 366), and is a somewhat formal account of the proceedings. From the folding of the leaves and from other indications it may be conjectured that it was a sort of public account sold by stationers at so much for the week's proceedings. Such manuscript copies of Parliamentary proceedings were in demand and could be sold at good prices. While this account of the Parliament of 1628 is less exactly verbatim and more formal, it is quite the most picturesque narrative of the Parliament. Rushworth's account of the Parliament of 1628 is based upon another manuscript account of the proceedings, an account which, judging from the number of manuscripts in existence to-day, must have had very general circulation. It is an account which was evidently "written up" afterward, and often represents probably more what the members intended to say, or thought afterward that they had said, than what they really uttered.

### III. QUESTIONS AND SUGGESTIONS FOR STUDY

#### Part A. Elizabeth<sup>1</sup>

- I. Why was Elizabeth unwilling to have the question of the succession discussed? Why were the Commons so anxious to discuss it?

<sup>1</sup> See note on p. 176 explaining the division of this problem into two parts.

## Source Problems in English History

2. In the struggle of November, 1566, what was the compromise arrived at? Which got the best of it? What led Elizabeth to make concession?
3. In 1571 why was Strickland detained from the Commons? Why did Carleton wish him brought before the bar of the House? What principle did he have in mind (see Strode case in Historical Setting)? In what light did Mr. Treasurer regard the introduction of Puritan legislation?
4. By whom was Peter Wentworth sequestered in 1576? Was his sequestration a violation of privilege?
5. What abuses of free speech did Wentworth point out? Was he the first to point out the fundamental importance of free speech or had it been done before?
6. When he says that the sovereign should be "under the law" what does he mean by law?
7. What was Wentworth's attitude toward the Queen? Did Wentworth stumble into trouble or seek it? Why?
- X 8. When the Chancellor in 1580 warned the Commons off certain subjects what precedents for his action might he have cited?
9. In Elizabeth's speech of February 15, 1593, is she pushing the sovereign's power further or standing by a former position? What threat does she make? Whom does she mean as "fitter to consider of such things"?
- X 10. Analyze the different ways in which Elizabeth interfered with free speech in the Commons. In what way did she transgress most often? In what way least often? Did she recognize any point beyond which she must not go?
11. What light do you get on Elizabeth's character?
12. What evidences do you find of her intention to rule constitutionally?
13. Do you find any evidence that Elizabeth's councilors were not in full sympathy with her policy in the matter of privilege? Any evidence that their attitude sometimes affected her policy?

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14. Do you find any reason to believe that the Commons tolerated Elizabeth's violations of privilege because she was Elizabeth and a woman?
15. Had freedom of speech been gaining or losing under Elizabeth?

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- 16.. What was Elizabeth's notion as to the freedom of members to introduce measures? Did her notion have any basis?
17. What was Elizabeth's notion as to the rôle of the Privy Council in legislation? Any evidence that the Commons ever accepted that notion?
18. What seems to have been meant by the "prince's prerogative"? How far had any notion developed that there should be limits to the prerogative?

### Part B. The Stuarts

- 1. What light does the Apology of 1604 throw on the first year of James's reign?
- 2. What do you think of distinction Bacon makes in the debates of 1610? What would be the result in practice of such a distinction?
- 3. What different arguments are presented by the Commons in the Petition of 1610? Was the Petition wholly true?
4. In what two ways did James infringe upon freedom of speech in 1614?
5. When James threatened in his speech of December 4, 1621, to "punish any man's misdemeanors in parliament" was he keeping his promises? How would he probably have answered such a question?
- 6. In the controversy between King and Commons as far as December 14th, what arguments of the King seem strong? What is the argument of the Commons? What inconsistency in their position? Why did they not make a more direct issue with the King?

## Source Problems in English History

7. When had James first made the claim that privileges are derived from grace? What was the implication of such a claim as to the value of precedents? What would such a claim mean about the English Constitution?
8. Why were the Commons not satisfied with James's letter of December 17, 1621?
9. On how wide a range of subjects did the Commons in the Protestation of December 18th claim a right of discussion?
10. What was intended to be the effect of tearing the Protestation from the clerk's book?
11. What do you think of Lando's prophecy as to what would happen the King if he did not stand upon his authority?
12. Do you find any likeness between James's struggles with his Parliaments and Richard II.'s struggles?
13. What indications do you find as to James's character?
14. In the debate of May 12, 1626, how does Carleton's interpretation of the history of Parliaments compare with the facts? What is Carleton's theory of the best form of government? Is his statement on May 12th a threat or a prophecy?
15. In the matter of Eliot and Digges, had Charles real occasion for anger? How does the whole incident reveal his weakness of character? Indicate two policies either of which would have been better.
16. In the debates of June 5, 1628, what new form did the issue of free speech take? Was the sovereign on stronger or weaker ground than before? Why was the feeling so intense?
17. In the trial before the King's Bench in 1629 what was the crux of the argument in the decision handed down? What was the significance of the decision? What had the King gained by it? What happened to Eliot (see any English history)?
18. Go over the documents of James I. and Charles I. and point out the cases where the Commons had been urged

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to keep off certain subjects; where members had been punished for speech in Parliament; where the King had received unofficial information of the proceedings in Parliament.

19. Do you detect in the Parliaments of James's and Charles's reign any thought or concern beyond the immediate practical bearing of the matter? Do you detect any such concern upon the part of the crown?
20. When the Long Parliament reversed the decision of the judges in 1630 what had it accomplished?
21. What necessity for the action of Charles II.'s Parliament?
22. What was the significance of the article about free speech in the Bill of Rights?
23. Why was freedom of speech an absolutely vital matter in the seventeenth century? What fundamental question did it involve as to the future of English government?  
275. 230
24. Point out the difference in attitude toward Parliament of Elizabeth and of the first Stuarts.
25. What is the difference in the tone of Parliament toward the sovereign in the reign of Elizabeth and in the reigns of the first Stuarts? What about the claims of Parliament under Elizabeth and under the first Stuarts?
26. Go over the reigns of James I. and Charles I. and point out the cases where precedents and ancestral rights are appealed to in behalf of Parliament? Did the supporters of the King ever deny the historical foundation of free speech?

## IV. The Sources

### PART A

#### FREEDOM OF SPEECH UNDER ELIZABETH

1. *Commons Journals*, I.<sup>1</sup>

Page 76.

[Nov. 9, 1566.] *Mr. Vice-Chamberlain* [Sir Francis Knollys] declared the Queen's Majesty's express commandment to this House that they should no further proceed in their suit, but to satisfy themselves with her Highness' promise of marriage. Mr. Secretary [Cecil] and Mr. Comptroller [Croft] severally rehearsed the like matter.

10 [Nov. 11th.] *Paul Wentworth*, one of the burgesses, moved whether the Queen's commandment was not against the liberties; whereupon arose divers arguments continuing from nine of the clock till two afternoon. . . .

15 <sup>1</sup> It will be observed in this and in several of the following extracts that some of the same selections have been used as Prothero avails himself of in his excellent collection of documents. It was quite impossible to go over Elizabethan parliamentary sources and not to use some of the same passages.

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Pages 76-77.

[Nov. 12th.] *Mr. Speaker*, being sent for to attend upon the Queen's Majesty . . . at his coming [to the House] . . . began to shew that he had received a special commandment from her Highness to this House, notwithstanding her first commandment, that there should not be further talk of that matter [the question of a successor in case the Queen should die without issue], and if any person thought not himself satisfied, but had further reasons, let him come before the Privy Council, there to shew them.

Page 78.

[Nov. 25th.] *Mr. Speaker*, coming from the Queen's Majesty, declared her Highness' pleasure to be that for her good will to the House, she did revoke her two former commandments, requiring the House no further at this time to proceed in the matter. Which revocation was taken of all the House most joyfully, with most hearty prayer and thanks for the same.

Page 81.

[Jan. 2, 1567. Queen's speech in closing Parliament.] . . . It pleased the Queen's Majesty to declare . . . that she seemed not pleased with the doings of the Commons for busying themselves in this session with matters which did not appertain at this time. . . .

2. *Calendar of State Papers, Spanish, 1558-1567.*

Guzman de Silva (Spanish Ambassador to England), to the King.

## Source Problems in English History

Page 594.

[Nov. 11, 1566.] The members of Parliament who had met, as I wrote your Majesty on the 4th inst., resolved the same day to petition the Queen by common consent to deal with the matter of the succession. She summoned them the next day to give them her reply, and made them a long speech, pointing out the dangers that might result therefrom to the peace and order of the country. This she enforced by examples, and said she was not surprised at the members of the Lower Chamber treating this matter like inexperienced school-boys . . . but she marvelled greatly that the Lords had concurred. . . .

She told me that many of them [members of Parliament] had asked pardon, saying they had no intention of offending her, but rather of serving her, seeing that the members of her Council who had spoken first, had requested that the matter of the succession should be taken in hand. . . . I told her I understood that the members of the Lower House, notwithstanding the answer given to them, again wanted to bring up the matter, and I was surprised at the rashness and insolence they exhibited. . . . She said that I was right, but she had sent them an order not to discuss the matter under pain of punishment for disobedience, and that all had now obeyed. . . .

Page 596.

[Nov. 13th. The Same to the Same.] . . . The Queen seeing that they were determined to carry



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on the discussion about the succession, sent them an order not to do so, but as after the order was written it was understood that the members thought that during the sittings they had full liberty to treat  
5 upon matters beneficial to the country, they have greatly resented the order, and I am told that the Council have used their efforts with the Queen to allow Parliament to discuss freely this and other matters, since the confirmation of their acts rests  
10 with her. . . .

Page 598.

[Nov. 25th. The Same to the Same.]

Notwithstanding the Queen's orders to Parliament, respecting their discussion of the succession,  
15 and a more recent order that they should not even discuss her prohibitions, or enquire as to whether they were a violation of the privileges of Parliament, they have nevertheless been discussing this last prohibition, although it was thought they would not  
20 do so. I am told that the insolence of these heretics, and their hankering after liberty in everything, is greatly disgusting the Queen. . . .

Since writing the above, I have been informed that the Queen sent to Parliament to-day, saying, that  
25 notwithstanding the orders she had given for them not to discuss the succession, it was not her intention to deprive them of the freedom of speech conferred by their privileges. It is believed that an arrangement has been made that they shall refrain

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from further considering the succession, and will content themselves with vindicating the freedom of Parliamentary discussion.

Page 603.

5 [Dec. 16th. The Same to the Same.]

I was with the Queen yesterday, and to draw her out, said amongst other things, that now that supplies had been voted, she should take means to close Parliament. . . . She said . . . she would try to have  
10 it closed before Christmas, although the members had begun to deal with religious affairs, which were quite foreign to their business.

3. *State Papers, Domestic, Elizabeth*, Vol. XLI, No. 30.  
[In Burleigh's hand.]

15 To be declared to the Commons House by the Speaker.

The Queen's Majesty hath commanded me to let you understand that whereas shortly after she had given her answer to certain of this House, in the  
20 matters intended to have been required of her Majesty as the necessity of the time and other weighty considerations presently moved her, upon the sight of certain matters which some persons intended under pretence of dealing in the former suit, to pro-  
25 pound in this House touching the crown of this realm, very unmeet for the time and place, and certainly dangerous to the common quietness of her subjects now assembled, did by her Majesty's commandment will you all to stay your proceeding any

## Freedom of Speech

further in the said matter at this time, and now being informed by such of this House as she hath cause to credit, that there is not now any determination of this House to receive or allow any such dangerous  
5 matter, as she before did doubt, is therefore pleased to remove<sup>1</sup> at this time her former commandments, not doubting but you will be answerable in your whole doings . . . and thinketh it good that you have regard to the expedition of the matters of most  
10 moment remaining amongst you, considering the expense of the time past and the shortness of that which is now to come, the term ending also so shortly as it shall.

[An addition.]

15 If any person after this message, shall either presently or at any time after during this session, in the Commons House begin any speech, tending directly or indirectly to make any declaration of any particular title to the succession of the crown of this realm,  
20 the Speaker shall forthwith in her Majesty's name command the party to cease off from any such further speaking, and shall declare to the whole House that so is her Majesty's express commandment.

25 This manner of answer her Majesty hath thought

<sup>1</sup> In the MS. the word *remove* is crossed and *deliver you at this point* inserted in the Queen's handwriting. Evidently Elizabeth was loath to yield. That the *remove* was put back in is clear from what we are told in the Commons Journals for November 25th.

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best without any further answer to the request that hath been made to have leave to confer upon the liberties of the House, forasmuch as thereof must needs have issued more inconvenience than were  
5 meet.

[Nov. 24, 1566. Signed by 11 members of the Privy Council.]

4. D'Ewes's *Journals*, p. 176.

[April 21, 1571.] For the said Mr. Strickland  
10 having on Saturday the 14th day of this instant April, pressed very earnestly the reformation of the Book of Common Prayer, and some ceremonies of the Church, was, after the adjournment of the House of Commons on that day . . . called be-  
15 fore her Majesty's Council . . . and was commanded by them to forbear coming to the said House, in the mean season, and to attend their further pleasure. . . .

Pages 175-176.

20 [April 20, 1571.] *Mr. Carleton* . . . made signification how that a member of the House was detained from them (meaning Mr. Strickland) by whose commandment or for what cause he knew not. But for as much as he was not now a private man, but to  
25 supply the room, person, and place of a multitude specially chosen . . . he thought that neither in regard of the country, which was not to be wronged, nor for the liberty of the House, which was not to be infringed, we should permit him to be detained

## Freedom of Speech

from us. But whatsoever the intendment of this offence might be, that he should be sent for to the bar of that House, there to be heard and there to answer.

- 5 *Mr. Treasurer* [Mildmay] . . . gave advertisement to be wary in our proceedings, and neither to venture further than our assured warrant might stretch nor to hazard our good opinion with her Majesty on any doubtful cause. . . . He further said that he [Mr.  
10 Strickland] was in no sort stayed for any word or speech by him in that place offered; but for the exhibiting of a bill into the House against the prerogative of the Queen, which was not to be tolerated. . . . And lastly he concluded that oft it had been seen  
15 that speeches have been examined and considered of. . . .

- Mr. Yelverton* . . . said the precedent was perilous, and though in this happy time of lenity, among so good and honorable personages, under so gracious  
20 a prince, nothing of extremity or injury was to be feared; yet the times might be altered, and what now is permitted, hereafter might be construed as of duty, and enforced even on this ground of the present permission. . . . He shewed it was fit for  
25 princes to have their prerogatives, but yet the same to be straitened within reasonable limits. . . . He further said that the speech uttered in that place, and the offer made of the bill, was not to be condemned as evil; for that if there were anything in

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the Book of Common Prayer, either Jewish, Turkish, or Popish, the same was to be reformed. . . .

*Mr. Fleetwood*<sup>1</sup> . . . said then that of experience he could report of a man that was called to account  
5 of his speech in the 5th [year] of this Queen<sup>2</sup> . . . what he had learned in the Parliament Rolls he thought convenient should be known and considered of. In the time of Henry IV. a bishop of the Parliament was committed to prison by commandment of the King;  
10 the Parliament resolved to be suitors for him.<sup>3</sup> And in King Henry V. the Speaker himself was committed, and, with him another of the House;<sup>4</sup> the House thereupon stayed, but remedy they had none,

<sup>1</sup> Fleetwood was a few days later to be made Recorder of London,  
15 through Leicester's influence, and no doubt in this speech was trying to please the Court.

<sup>2</sup> This may refer to Paul Wentworth, who had been one of those most persistent in 1566 in discussing the question of succession, or it may refer to the very interesting case of James Dalton, whose  
20 case was referred to the Commons by Elizabeth the very day after her message of Nov. 25, 1566. Dalton had talked about the Queen of the Scots (see Cal. of the MSS. of the Marquis of Salisbury, I, p. 341, and Cal. State Papers, Dom., 1547-1580, p. 283).

<sup>3</sup> This is an allusion to the case of Thomas Merke, Bishop of  
25 Carlisle, who was said on Henry IV.'s accession to have made a speech in the Lords in favor of Richard and to have been imprisoned for it. It is exceedingly doubtful if the bishop was imprisoned for any speech in Parliament; indeed, it is not certain that he made a speech.

<sup>4</sup> This is undoubtedly a mistaken allusion to the imprisonment of Speaker Thorpe and William Rail in 1453 in the reign of Henry VI. The Commons were suitors for Thorpe's release, but the privilege involved was freedom from arrest rather than freedom of speech. The Lords decided that Thorpe should remain in prison  
35 and the Commons elected a new Speaker.

## Freedom of Speech

other than to be suitors to the King for them; whereupon he resolved, that the only and whole help of the House for ease of their grief in this case was to be humble suitors to his Majesty, and neither  
5 send for him, nor demand him of right.

During which speech the Council whispered together, and thereupon the Speaker moved that the House should make stay of any further consultation thereupon.

10 [April 21st.] . . . The above mentioned Mr. Strickland did this Forenoon, (upon an advertisement, as it should seem, from her Majesty's Council) repair again to the said House, soon after it was set. And coming just upon the time, when the foregoing Bill for  
15 coming to Church and receiving the Communion, was in the referring to Committees, the said House did in witness of their joy for the restitution of one of their said members . . . presently nominate him one of the said committees. . . .

20 5. D'Ewes's *Journals*, p. 236.

Pages 236-244.

[Feb. 8, 1576.] *Peter Wentworth* . . . was for unreverent and undutiful words uttered by him in this House of our sovereign lady the Queen's Majesty  
25 sequestered, that the House might proceed to conference and consideration of his said speech.

Peter Wentworth's Speech.

[Feb. 8, 1576.] I find written in a little volume these words. . . . Sweet is the name of liberty, but

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the thing itself a value beyond all inestimable treasure. So much the more it behoveth us to take care lest we contenting ourselves with the sweetness of the name, lose and forego the thing, being  
5 of the greatest value that can come unto this noble realm. . . . There is nothing so necessary for the preservation of the prince and state as free speech, and without it [it] is a scorn and mockery to call it a Parliament House. . . . Two things do great hurt  
10 in this place . . . the one is a rumour which runneth about the House and this it is, take heed what you do, the Queen's Majesty liketh not such a matter; whosoever prefereth it, she will be offended with him. . . . The other: sometimes a message is brought  
15 into the House either of commanding or inhibiting, very injurious to the freedom of speech and consultation. I would to God, Mr. Speaker, that these two were buried in hell. . . .

The King ought not to be under man but under  
20 God and under the law, because the law maketh him a King<sup>1</sup> . . . and thereunto was her Majesty sworn at her coronation, as I have heard learned men in this place sundry times affirm; unto the which I doubt not but her Majesty will for her honour and  
25 conscience sake have special regard; for free speech and conscience in this place are granted by a special

<sup>1</sup> Bracton, Bk. I, ch. VIII, p. 5. But the King himself ought not to be subject to man, but subject to the law, for the law makes the King.



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law, as that without the which the prince and state cannot be preserved or maintained. . . .

A message Mr. Speaker brought the last sessions into the House, that we should not deal in any matters of religion, but first to receive from the bishops. Surely this was a doleful message. . . .

[Wentworth said many other things in criticism of the Queen and of her Councilors.]

Extract from Wentworth's Examination before a  
10 Committee of the Commons, on the 8th of February for the speech made that day.

. . . And yet I will assure your Honours that twenty times and more, when I walked in my grounds revolving this speech to prepare against this day, my  
15 own fearful conceit did say unto me, that this speech would carry me to the place whither I shall now go, and fear would have moved me to have put it out; then I weighed whether in good conscience, and the duty of a faithful subject, I might keep myself out  
20 of prison, and not to warn my prince from walking in a dangerous course . . . herewith all I was made bold and went forward as your Honours heard, yet when I uttered those words in the House, that there was none without fault, no, not our noble Queen,  
25 I paused and beheld all your countenances and saw plainly that those words did amaze you all . . . and fear bade me to put out those words that followed, for your countenances did assure me that not one of you would stay me of my journey; yet the con-

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sideration of a good conscience and of a faithful subject did make me bold to utter it . . . and I praise God for it, and if it were to do again I would with the same mind speak it again.

*244-8*

- 5 [The Committee, if we may judge from its chairman, showed itself inclined to criticize Wentworth for his severe forms of expression, but seemed on the whole very friendly and markedly willing to admit his allegation in a general way. They were unable to secure from him  
10 any admission of a fault. In consequence they recommended that he be committed to the Tower to remain until "this House should have further consideration of him."—C. J., I, p. 104.]

Page 244.

- 15 The said Mr. Wentworth was by the Queen's special favour restored again to his liberty and place in the House on Monday the 12th day of March ensuing.  
6. *Commons Journal*, I, p. 118.

- [Jan. 20, 1580.] This day the House being assembled . . . and attending her Majesty's coming to the  
20 Higher House, went then up with Mr. Speaker. . . . And my Lord Chancellor in his oration did amongst other things give a special admonition unto this House [Commons] not to deal with matters touching  
25 her Majesty's person or estate or touching religion.

7. *D'Ewes's Journals*.

Page 474.

- [Feb. 26, 1593.] *Mr. Morrice*, Attorney of the Court of Wards, moveth the House touching the  
30 hard courses of the bishops and ordinaries and

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other ecclesiastical judges in their courts, used towards sundry learned and godly ministers and preachers of this realm by way of inquisition, subscription and binding absolution.

5 [Several speeches made about it.]

Then *Sir Robert Cecil* [of the Privy Council] spake and said. . . . What the bill containeth I am ignorant of; and whether to allow of it or not, I will suspend my opinion. To say the truth, the man that offered  
10 it was learned and wise, and one whom I love; yet a bill to be offered and enforced in this sort being of such effect, I know not how to allow of it. For her Majesty had straitly forbidden to meddle in such cases. . . . For the bill I protest I know it not;  
15 but it seemed to contain things needful. Wherefore it were fittest it should be commended to her Majesty, and so recommended unto us.

[The Speaker asks that it be committed to him to consider of it, and promises that he will keep it  
20 with all secrecy.]

Hereupon the House was in question whether it should be committed to the Speaker only, or to the Privy Council and him. . . . Therefore upon a motion made by Mr. Wroth, it was agreed that Mr. Speaker  
25 should have it.

[Feb. 28th.] *Mr. Speaker* stood up and said, that he had a message to deliver from her Majesty. [Says that he had two bills delivered to him yesterday to consider of.]

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A little after I had perused the bills, I was sent for by a special messenger from her Majesty. Coming in her royal presence I was commanded to deliver these words from her most excellent Majesty unto the  
5 body of the realm. . . . Her Majesty's pleasure being then [at the beginning of Parliament] delivered unto us by the Lord Keeper, it was not meant we should meddle with matters of state or causes ecclesiastical . . . she wondered that any could be of so high com-  
10 mandment to attempt (I use her own words) a thing so expressly contrary to that which she had forbidden. Wherefore with this she was highly offended. . . . Her Majesty's present charge and express commandment is, that no bill touching the  
15 said matters of state or reformation in causes ecclesiastical be exhibited. And upon my allegiance I am commanded, if any such bill be exhibited not to read it.

8. Townshend, *Historical Collections*.

20 Page 37.

The Queen's Reply through the Lord Keeper to the Speaker's demands for Privilege at the Beginning of Parliament, Feb. 19, 1593.

To your three demands the Queen answereth,  
25 liberty of speech is granted you; but how far this is to be thought on. There be two things of most necessity, and those two do most harm; which are wit and speech; the one exercised in invention, the other is uttering things invented. Privilege of

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speech is granted; but you must know what privilege you have, not to speak everyone what he listeth, or what cometh in his brain to utter, but your privilege is to say yea or no. Wherefore, Mr. Speaker,  
5 her Majesty's pleasure is, that if you perceive any idle heads which will not stick to hazard their own estates, which will meddle with reforming of the church and transforming of the commonwealth, and do exhibit any bills to such purpose; that you receive  
10 them not until they be viewed and considered of by those whom it is fitter should consider of such things and can better judge of them.

9. Townshend.

Page 54.

15 [Feb. 24, 1593.] This day Mr. Peter Wentworth and Sir Henry Bromley delivered a petition unto the Lord Keeper, therein desiring the Lords of the Upper House to be suppliants with them of the Lower House unto her Majesty for entailing the  
20 succession to the crown; whereof a bill was ready drawn by them. Her Majesty was highly displeased therewith, after she knew thereof, as a matter contrary to her former strait commandment, and charged the Council to call the parties before them.  
25 Sir Thomas Heneage presently sent for them; and after speech with them commanded them to forbear coming to the Parliament, and not to go out from their several lodgings.

About this matter in the beginning of the Parlia-

## Source Problems in English History

ment was a committee appointed to be had of many wise, grave, and ancient Parliament men as were of the House; but at this time few met at the place appointed, at least such men as were expected.

5 . . . The day after being Sunday and Feb. 25th, and the House sat not; yet the aforesaid Mr. Wentworth, Sir Henry Bromley, and some others, were called before the Lord Burleigh. . . . Lord Buckhurst, and Sir Thomas Heneage, who entreated them very  
10 favorably, and with good speeches; but so highly was her Majesty offended that they must needs commit them, and so they told them. Whereupon Mr. Peter Wentworth was sent prisoner to the Tower, Sir Henry Bromley and one Mr. Richard Stevens . . .  
15 were sent to the Fleet, as also Mr. Welch the other knight for Worcestershire.

## PART B

### FREEDOM OF SPEECH UNDER THE STUARTS

It can readily be seen that freedom of speech had made  
20 a good deal of progress under Elizabeth. Not because Elizabeth made concessions—for she made few of them—but because, thanks to the persistence of Paul and Peter Wentworth and men like them, the question had become an issue. Peter Wentworth had given it public  
25 licity; he had done more, by spending days and nights in prison he had made it a good cause. Parliament had been aroused, even the Privy Councilors had scarcely

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been able to forbear a discreet sympathy. Not only was the privilege being more naturally assumed in theory, but it was being more frequently adopted in practice. Never had the Commons talked so freely, never had they better reason. They feared a successor to Elizabeth who might carry the country back to the religious polity of Mary. The most of them were distressed at episcopal innovation and shocked at increasing persecution of those who did not conform. They could not remain silent. All the active pressure of Puritan zeal was behind the demand for liberty of discussion. And there was a new consciousness which would give to that demand a general sanction, a sense of the meaning of limited government, a sense that "this sceptred isle . . . this dear, dear land, dear for her reputation throughout the world" deserved the "envy of less happier nations" not only because its kings were renowned, but because they were under law.

Into such a land came a Scottish king, full of bookish notions about the divine right of kings whose state is the "supremest thing on earth," cocksure in his opinions and utterly unaware of the English discovery of limited monarchy. On the issue of free speech, if on no other, there was sure to be trouble.

1. *Parliamentary History*, I, pp. 1033-34. Apology of the Commons. [June 20, 1604.]

. . . Now concerning the ancient rights of the subjects of this realm, chiefly consisting in the privileges of this House of Parliament, the misinformation openly delivered to your Majesty hath been in three things: 1st. That we held not privileges of right, but of grace only, renewed every Parliament by way of donature upon petition, and so to be limited.

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[The two other points do not concern this subject.]

. . . We most truly avouch, 1st. That our privileges and liberties are our right and due inheritance, no less than our very lands and goods. Secondly,  
5 That they cannot be withheld from us, denied, or impaired, but with apparent wrong to the whole state of the realm. Thirdly, and that our making of request, in the entrance of Parliament to enjoy our privilege is an act only of manners, and doth  
10 weaken our right no more than our suing to the King for our lands by petition.

In the first Parliament of the happy reign of your Majesty the privileges of our House and therein the liberties and stability of the whole kingdom, have  
15 been more universally and dangerously impugned than ever (as we suppose), since the beginnings of parliaments.—Besides that in regard of her sex and age which we had great cause to tender, and much more upon care to avoid all trouble . . . these actions  
20 were then passed over, which we hoped in succeeding times of freer access to your Highness of renowned grace and justice, to redress, restore and rectify. Whereas contrarywise in this Parliament . . . not privileges, but the whole freedom of Parliament . . .  
25 have been mainly hewed at us. . . . Secondly the freedom of our speech prejudiced by often reproofs. Thirdly, particular persons noted with taunt and disgrace who have spoken their consciences in matters proposed to the House. . . .



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What cause we your poor Commons have to watch over our privileges is manifest in itself to all men. The prerogatives of princes may easily and do daily grow. The privileges of the subject are for the most  
5 part at an everlasting stand. They may be by good providence and care preserved, but being once lost, are not recovered but with much disquiet.

[In the Bate's case in 1606 the Barons of the Exchequer gave a decision that the crown could levy impositions—  
10 *i. e.*, certain added duties, without consent of Parliament. In consequence the Lord Treasurer in 1608 issued a "book of rates." Parliament found its control over the purse-strings seriously lessened, and lessened by a means hard to circumvent—a court decision. When it set about in  
15 1610 to discuss the matter the King sent word "not to dispute of the King's prerogative in imposing upon merchandise exported or imported." A few days later he received the Commons and repeated his injunction. This proved "distasteful" to the Commons and "divers  
20 speeches were made."]

### 2. *Parliamentary Debates in 1610.*

Pages 37-39.

*Mr. Fuller* repeated part of a speech that was formerly spoken by *Mr. Whitelocke*.<sup>1</sup> . . . That the  
25 special privilege of Parliament is to debate freely of all things that shall concern any of the subjects in

<sup>1</sup> Sir James Whitelocke (father of the more famous Bulstrode), who was one of the most vigorous opponents of the King in this and the next Parliament (see his *Liber Famelicus*, Camden Soc., 1858,  
30 p. 24), was later as one of the judges of the King's Bench to concur in the decision against freedom of speech,

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particular, or the commonwealth in general without any restraint or inhibition. Secondly it was said [by Sir Thomas Wentworth] that in all ages the King's prerogative (which was the matter then in question) hath been examined and debated in Parliament. . . . Also it was said that in all courts of justice at Westminster the King's prerogative is there ordinarily disputed, and therefore may much more be debated in Parliament, being the highest court of justice in the realm. . . .

But *Sir Francis Bacon* took upon him to answer these reasons. . . . He said that he had been a Parliament man ever since he was 17 years old, within which time he did observe that the Parliament had received divers inhibitions from the Queen to restrain them from debating the matter then in question; wherein he took this difference, that if the matter debated concerned the right or interest of any subject or the commonwealth, if in that case an inhibition came, he, for his part, would not advise the House to desist, but to inform the King of the liberty of the House, and so to proceed. But if the matter in question were an essential thing which concerned the prerogative and the power of the crown, then the House did always desist from proceeding any further upon such inhibitions received. He gave instances of divers in his time. . . . In answer to this speech divers stood up. . . . But if it be true, as Mr. Solicitor confessed, that the

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Parliament may not be inhibited to debate of anything that concerns the right of particular subjects, much less can they be inhibited in this matter of impositions, which concerns the rights and interests  
5 of all the subjects in general. . . .

It was moved therefore that, as the King had granted us freedom of speech at the beginning of the Parliament concerning all matters of the commonwealth . . . so we should by a Petition of Right  
10 make known our liberties to his Majesty. and desire him to remove the impediment.

3. *Commons Journals*, I, p. 431.<sup>1</sup> (Petition to the Sovereign, May 23, 1610.)

Most gracious sovereign: . . . First we hold it  
15 an ancient, general, and undoubted right of Parliament to debate freely all matters which do properly concern the subject and his right or state; which freedom of debate being once foreclosed, the essence of the liberty of Parliament is withal  
20 dissolved.

And whereas in this case the subject's right on the one side and your Majesty's prerogative on the other cannot possibly be severed in debate of either; we allege that your Majesty's prerogatives of that  
25 kind, concerning directly the subject's right and interest are daily handled and discussed in all courts at Westminster, and have been ever freely debated upon all fit occasions both in this and all former Parliaments without restraint. . . .

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We therefore your Highness's loyal and dutiful Commons, not swerving from the approved steps of our ancestors, most humbly and instantly beseech your gracious Majesty that . . . we may, according  
5 to the undoubted right and liberty of Parliament, proceed in our intended course of a full examination of these new impositions. . . .

4 (cont.). *Parliamentary Debates, 1610*, pp. 41-42.

[May 24th. The King's Answer.] . . . He said his  
10 message was not absolutely to forbid us from treating of the impositions, but only until we heard his further pleasure; not with any intent for ever to restrain us. . . .

For our Petition he granted it as we had set it  
15 down ourselves.

[The Commons in 1614 ("Addled Parliament") were more unfavorable to James than in any preceding Parliament. It soon became evident they intended to vote no grant until the grievance of impositions was remedied.  
20 When Neile, Bishop of Lincoln, attacked them in the Lords for meddling with matters that did not belong to them and talked about seditious speeches they might utter if they should confer with the Lords, the Commons took umbrage. The Lords, after they had been given  
25 clear proofs of the Bishop's speech, called upon him to explain. He declared that his meaning had been misunderstood. But the Commons, not fully satisfied with him, or with the Lords' attitude in the affair, pressed the attack.]

30 5. *Calendar of the State Papers, Domestic, 1611-18*.

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Page 236.

[London, June 9, 1614. Chamberlain to Carleton.]

The Commons refusing satisfaction from the Bishop of Lincoln and growing insolent, the King  
5 sent them word he would dissolve them unless  
they attended at once to his wants. Bold speeches  
of several members on which a commission was issued  
to dissolve the Parliament. The time was short,  
and discontents so great that they took no steps  
10 to mend matters, the House being more like a cock-  
pit than a council, and on the 1st the House was  
dissolved, and some members summoned to the  
Council, and sent thence to the Tower.

Page 237.

15 [St. Bartholomewes (London), June 16, 1614. Sir  
Ralph Winwood to Carleton.]

Never saw so much faction and passion as in the  
late unhappy Parliament, nor so little reverence  
of a King. . . . The impositions were the great griev-  
20 ance, also a speech of the Bishop of Lincoln taxing  
the Commons with sedition, and the King's messages  
were thought to abridge the liberty of the House.  
The breakneck was some seditious speeches which  
made the King impatient, and it was whispered to  
25 him that they would have his life and that of his  
favorites before they had done, on which he dis-  
solved them. Four of their tribunes, Sir Walter  
Chute, Chris. Neville, Hoskins, and Wentworth, are  
sent to prison. . . .

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[James's son-in-law, Frederick, head of the south German electorate known as the Palatinate, had in 1619 accepted the crown of Bohemia from the estates of that country who had deposed the Archduke Ferdinand. Frederick was defeated and driven out of Bohemia by the imperial forces, Ferdinand had now become emperor. Not only was Bohemia lost, but the Palatinate was invaded from the west by Spanish troops. These rapid moves in the 'Thirty Years' War alarmed James, who called Parliament together to get money for a war against Spain and then concluded with surprising fatuity that he could gain what he wished, the security of the Palatinate, by negotiation, perhaps by the marriage of his son Charles to the infanta of Spain. Parliament, Puritan and anti-Spanish, had no will for such a policy and was disinclined toward watchful waiting. In any case they wished to discuss the policy. James wished money.]

6. Sir Edward Nicholas, *Proceedings and Debates of the House of Commons, 1620-21*, II.

Pages 185-199.

[Nov. 21, 1621.] *The Lord Keeper*. . . . For the form of imitation for this assembly, he saith that we should imitate the ancient times and form of Parliament, and avoid all long harangues, all malicious or cunning diversions, that we should not attend our domestic business, till we had furnished and finished the business of the Palatinate, and provided first to send speedily thither some aid or supply.

[Nov. 23d.] *Mr. Alford* saith that the King hath commanded by two proclamations that none should

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meddle or talk of state business; and yet hath again commanded by the three lords that we should not meddle but with the business of the Palatinate. That this is a precedent wherein we are warily to  
5 proceed; for hereafter the King may else say we shall meddle only with this or that business, and not with other things, and so we lose the privilege of a free Parliament. He would that we should hasten to dispatch the business of the House; for hereafter  
10 if we shall touch on anything for the good of the commonwealth his Majesty may be incensed and so dissolve the Parliament. . . .

[The House took up the question of the privilege of one of its members, Sir Edwin Sandys, who had been im-  
15 prisoned for his efforts to defeat intrigues against the Virginia Company. The Commons suspected that he was suffering for what he had said in Parliament.]

*Sir Thomas Wentworth* saith that he hath observed that this House hath ever used to debate with jeal-  
20 ousy the privileges of this House, but we have ever done it with loss of our privileges rather than gain.

[On the 29th of November the Commons resolved to prepare a petition to be sent to the King. On December  
25 1st the form of the petition was brought in by the sub-committee. That petition emphasized the danger from Spain, from the Pope, and especially from Catholic designs in England, and urged that the King should join with other Protestant states in supporting the Elector  
30 Palatine against Spain, and that Prince Charles should

## Source Problems in English History

be married to one of his own religion. It was pointed out by the court party that such a petition dealing with war, marriage, and religion would incur the King's displeasure, and the answer from the supporters of the petition was  
5 that there were abundant precedents, even in the time of Elizabeth, for dealing with such matters, and that the King by asking Parliament to speak freely of the grievances of the kingdom and by saying in his speech that there was no hope for peace, had invited such a discussion.  
10 After the petition had been adopted and a committee named to take it to the King, the Commons received a letter from the King as follows]:

Page 277.

[Dec. 4, 1621. The King to the Speaker of the  
15 House of Commons.]

We have heard by divers reports . . . that the far distance of our person at this time . . . hath emboldened some fiery and popular spirits in our House of Commons to debate and argue publicly in matters  
20 far beyond their reach or capacity; and so tending to our high dishonor and to the trenching upon our prerogative royal.

You shall therefore acquaint that House with our pleasure that none therein shall presume to meddle  
25 with anything concerning our government or mysteries of state, namely not to speak of our dearest son's match with the daughter of Spain, nor to touch the honor of that King, or any other our friends or confederates: and also not to meddle  
30 with any men's particulars which have their due



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motion in any of our ordinary courts of justice. And whereas we hear that they have sent a message to Sir Edwin Sandys<sup>1</sup> to know the reason of his late restraint, you shall in our name resolve them that  
5 it was not for any misdemeanor of his in Parliament. But to put them out of doubt of any question of that nature that may arise among them hereafter, you shall resolve them in our name that we think  
10 ourself very free and able to punish any man's misdemeanors in Parliament, as well during their sitting as after; which we mean not to spare hereafter  
upon any occasion of any man's insolent behavior there, that shall be ministered unto us. And if  
15 they have already touched any of these points, which we have forbidden, in any petition of theirs, which is to be sent unto us, it is our pleasure that you shall tell them, that, except they reform it before it comes to our hands, we will not deign the hearing or answering of it. . . .

20 Pages 279-283.

[Dec. 4, 1621.] *Sir William Strode* saith, he thinketh that our thoughts being now disturbed by this message from his Majesty, we are not fit or able to debate of anything, till we have considered of it  
25 and digested it; and therefore would have us now rise and not so suddenly debate of this business, it being of the greatest consequence for our privileges that ever came hither.

<sup>1</sup> The debates on the Sandys case have been omitted.

## Source Problems in English History

[Dec. 5th.] *Mr. Delbridge* (after a long silence in the House) rose up and said. . . . As for the privileges of this House, touching the Petition we prepared for the King, he had as willingly hang under the gallows  
5 as fry over a faggot. And therefore, the state of our religion standing as it doth, he would have us go to the King again and again with our petition. . . .

*Sir Robert Phelips* saith that now is the time to justify the affection of the people to the King and  
10 to defend the privileges of this House, which our ancestors have delivered us, and which we ought to preserve for our posterity:—That his ground and anchor-hold is the King's word for our liberty of speech, delivered here in writing by Mr. Secretary  
15 . . . he saith he knoweth not what hath caused this soul-killing letter from the King. . . . And he desireth that there may be a committee appointed to consider what, on the like message from former Kings, the House hath done, and to consider what we may  
20 do to set us right in the King's favor and to proceed without breach of our privileges and liberties, without which defence we are unworthy of our lives, and to look those in the face who sent us hither.

*Mr. Hakewill.* . . . He hath known three the  
25 like storms in this House: the first in 5 Eliz. when this House did press her to know her successor, which she would by no means declare or have spoken of; yet on a petition from this House, her Majesty did give us leave to treat of it. 2. That in

## Freedom of Speech

the same Parliament there was a petition prepared as now, to beseech her to marry; and though she was much offended at it, yet by our temperance in that petition and on a second petition she did give  
5 us leave to treat and debate of her marriage here.

3. That the King heretofore, though at first he sent a sharp message to this House when it did begin to debate of impositions, yet on better information he did give us leave to debate thereof. . . .

10 [The House goes into committee. A long debate ensues.]

Pages 289-294.

[Dec. 6th. The Commons to the King.]

We . . . beseech your most excellent Majesty that  
15 the loyalty and dutifulness of as faithful and loving subjects as ever . . . lived . . . may not undeservedly suffer by the misinformation of uncertain reports. . . but that your Majesty would . . . first vouchsafe to understand from ourselves, and not from the partial  
20 informations of any others, what our humble declaration and petition, resolved on by the universal voice of the whole House, and proposed, with your gracious favor . . . doth contain. . . . And we humbly beseech your Majesty that you will not hereafter  
25 give credit to private reports against all or any of the members of our House, whom the whole have not censured, until your Majesty hath been truly informed thereof from ourselves. . . . When your Majesty had reassembled us in Parliament . . . and

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did vouchsafe by the mouths of three honorable lords to impart to us the weighty occasions moving your Majesty thereto, from them we did understand these particulars. . . . That your Majesty must  
5 either abandon your own children or engage yourself in a war. . . . And that out of these considerations we were called to a war, and forthwith to advise of a supply for keeping the forces in the Palatinate from disbanding. . . . We thereupon . . . did address  
10 ourselves to the service commended to us. And although we cannot conceive that the honor and safety of your Majesty . . . the patrimony of your children, invaded and possessed by their enemy, the welfare of religion and state of your kingdom, are  
15 matters at any time unfit for our deepest consideration in time of Parliament . . . we thought it our duty to provide for the present supply thereof and not only to turn our eyes on a war abroad, but to take care for the securing of our peace at home.  
20 . . . In the discourse whereof we did not assume to ourselves any power to determine of any part thereof, nor intended to encroach or intrude on the sacred bounds of your prerogative or regal authority to whom, and to whom only we humbly acknowledge  
25 that it doth belong to resolve of peace and war, and of the marriage of the noble prince your son. . . . Our humble suit to your Majesty . . . is that your Majesty will be graciously pleased to receive at the hands of these messengers our former humble

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declaration and petition. . . . And whereas your Majesty by the general words of your letter seemeth to restrain us from intermeddling with matters of government or particulars which have their motion  
5 in courts of justice . . . and whereas your Majesty's letter doth seem to abridge us of the ancient liberty of Parliament for freedom of speech, jurisdiction, and just censure of the House . . . a liberty which we assure ourselves so wise and so just a King will not  
10 infringe (the same being our undoubted right and inheritance, received from our ancestors) . . . we are therefore now again enforced humbly to beseech your Majesty to renew and allow the same and thereby take away the doubts and scruples your  
15 Majesty's late letter to our Speaker hath brought upon us. . . .

Page 303.

[Dec. 10th.] *Sir Edward Core* saith that it is on this point with us now as it was in the time of some  
20 of the former kings of this realm. In the Parliament roll at Westminster in *Sancti Hilarii, Anno secundo* H. 4, No. II. 25 Jan., the House did petition the King that, because it might happen that some of the Commons, to please the King and advance  
25 themselves, might relate some things here debated of, before it was determined, discussed, or accorded of by the Commons, (that) it would please his Majesty to give no credit to such reports.<sup>1</sup> . . .

<sup>1</sup> See *The Historical Setting*, p. 165.

## Source Problems in English History

This record [with the King's answer agreeing to the request] is delivered into the House, and it is ordered that it shall be entered here in the House in French and English, and that every one that will  
5 shall have copies of it.

Pages 317-327.

[Dec. 14, 1621. His Majesty's Answer to the Apologetic Petition of the House of Commons.]

. . . Now whereas . . . you tax us in fair terms of  
10 trusting uncertain reports and partial information concerning your proceedings, we wish you to remember that we are an old and experienced King, needing no such lessons, being in our conscience freest of any King alive from hearing or trusting  
15 idle reports. . . .

In the body of your petition you usurp upon our prerogative royal and meddle with things far above your reach, and then in conclusion, you protest the contrary. . . . And whereas ye pretend, that you were  
20 invited to this course by the speeches of three honorable lords, yet by so much as yourselves repeat of their speeches, nothing can be concluded but that we were resolved by war to regain the Palatinate, if otherwise we could not attain unto it; and you  
25 were invited to advise forthwith upon a supply for keeping the forces in the Palatinate from disbanding, and to foresee the means for the raising and maintaining of the body of an army for that war. . . . Ye come after to a direct contradiction to the

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conclusion of your former petition, saying, "that the honor and safety of us and our posterity, and the patrimony of our children . . . the welfare of religion and state of our kingdom are matters at  
5 any time not unfit for your (sic) deepest considerations in Parliament." To this generality we answer with the logicians that where all things are contained nothing is omitted; so as this plenipotency of yours invests you in all power upon earth,  
10 lacking nothing but the Pope's to have the keys also both of heaven and purgatory. . . .

And whereas ye excuse your touching upon the King of Spain . . . and yet affirm that it is without any touch to his honor, we cannot wonder enough  
15 that ye are so forgetful both of your words and writs. For in your former petition ye plainly affirm that he affects the temporal monarchy of the whole earth. . . . We omit the particular ejaculations of some foul-mouthed orators in your House against  
20 the honor of his crown and state. And touching your excuse of not determining anything concerning the match of our dearest son, but only to tell your opinions, and lay it down at our feet; first we desire to know how you could have presumed to deter-  
25 mine in that point without committing of high treason; and next you cannot deny but your talking of his match after that manner was a direct breach of our commandment and declaration out of our own mouth at the first sitting down of this Parliament. . . .

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These are unfit things to be handled in Parliament, except your King should require it of you: for who can have wisdom to judge of things of that nature, but such as are daily acquainted with the particulars of treaties. . . . And besides, the intermeddling in Parliament in matters of peace or war, and marriage of our dearest son, would be such a diminution to us and to our crown in foreign countries, as would make any prince neglect to treat with us. . . .

10 And although we cannot allow of the style, calling it "Your ancient and undoubted right and inheritance," but would rather have wished that ye had said, that your privileges were derived from the grace and permission of our ancestors and us (for

15 most of them grow from precedents, which shows rather a toleration than inheritance) yet we are pleased to give our royal assurance, that, as long as you shall continue to contain yourselves within the limits of your duty and respect to us. . . . we

20 will be as careful to preserve your lawful liberties and privileges, as ever any our predecessors were, nay, as to preserve our own royal prerogative: so as your House shall only need to beware to trench upon the prerogative of the crown, which would en-

25 force us, or any just King to retrench them of their privileges.

Page 331.

[Dec. 15, 1621.] . . . *Sir Francis Seymour* saith. . . . That though we now decline the farther disputing



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of the match, the matter of religion and war, yet he would have it here expressed and declared, that the consideration of the religion of this kingdom, the safety of his Majesty's person and this kingdom are  
5 not matters out of the cognizance of this House. . . .

*Mr. Christopher Brook* saith that we have our privileges and liberties by prescription, time out mind, and not by toleration. He would have a protestation entered in the House that we claim our  
10 privileges as an inheritance and not as granted from Kings to us. . . .

*Sir Robert Phelips.* . . . As for our privileges since his Majesty hath said we hold our liberties by the grace of princes, and not by a right descended unto  
15 us . . . he thinketh that we are now to do something more in this point than to let them thus rest. . . . He would have a select committee appointed for this purpose. . . .

*Mr. Thomas Crewe.* . . . That he thinketh the walls  
20 of this House would speak against us, if we should sit still and leave his Majesty in dislike of our styling our liberties our undoubted ancient right and inheritance. . . .

*Sir Edward Coke.* . . . That the liberties and privileges of Parliament are the mother and life of all  
25 laws, and laws are in Parliament in *summo gradu* [in the highest degree]. Whereas the King saith he liketh not our styling of our liberties our ancient inheritance, yet he will maintain and give us leave to

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enjoy the same, which indeed striketh at the root of all our privileges. *Consuetudo regni* [the custom of the kingdom] is the law of the kingdom. . . .

*Mr. Secretary* saith it was never in his Majesty's  
5 mind or opinion to question our privileges, but it was only the slip of a pen in the end of a long answer. That he would have a committee to consider hereof.

Pages 339-342.

→ [Dec. 17, 1621. The King's Letter to Mr. Sec-  
10 retary Calvert.]

. . . The plain truth is that we cannot with patience endure our subjects to use such anti-monarchical words to us, concerning their liberties, except they had subjoined that they were granted unto them  
15 by the grace and favor of our predecessors. But as for our intention herein, God knows we never meant to deny them any lawful privileges, that ever that House enjoyed in our predecessors' times . . . for whatsoever liberties or privileges they enjoy by any  
20 law or statute shall be ever inviolably preserved by us, and we hope our posterity will imitate our footsteps therein. And whatsoever privileges they enjoy by long custom and uncontrolled and lawful precedents, we will likewise be as careful to preserve  
25 them. . . . Let them go on cheerfully in their businesses, rejecting the curious wrangling of lawyers upon words and syllables. . . .

*Mr. Secretary* saith that it is not strange that the business of the House (which is so commonly spoken

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of abroad in the town) doth come to his Majesty's ear; and he thinketh whosoever hath informed his Majesty hereof, hath done a good office to the House. . . .

- 5 *Sir Edward Coke* saith that we have now by this last message (as he conceiveth) an allowance of our privileges, which indeed are ours by law, by custom, by precedent, and by act of Parliament. That he thinketh, if we did set down our privileges and  
10 liberties, it would clear us of all those rubs. . . .

Pages 359-360.

[Dec. 18, 1621. The Protestation.]

- That the liberties, franchises, privileges, and jurisdictions of Parliament are the ancient and undoubted birthright and inheritance of the subjects  
15 of England; and that the arduous and urgent affairs concerning the King, state and defence of the realm, and of the Church of England, and the making and maintenance of laws, and redress of  
20 mischiefs and grievances, which daily happen within this realm, are proper subjects and matter of counsel and debate in Parliament: and that in the handling and proceeding of those businesses every member  
of the House hath, and of right ought to have . . .  
25 liberty and freedom to treat of those matters, in such order, as in their judgments shall seem fittest . . . and that if any of the said members be complained of and questioned for anything said or done in Parliament, the same is to be showed to the

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King by the advice and consent of all the Commons assembled in Parliament, before the King give credence to any private information.

It is ordered . . . that this protestation shall be  
5 here entered forthwith in the book of the House, and there to remain as of record.

7. *Calendar of State Papers, Venetian, 1621-1623.*

Page 183.

10 Girolamo Lando (Venetian Ambassador in England) to the Doge and Senate. Dec. 23, 1621. [From the Secret Despatches in the Venetian Archives.]

I enclose a copy of the remarkable letter written by his Majesty to bridle the Parliament. I hear  
15 that the Ambassador Gondomar [the Spanish ambassador] had it the day before it was read in the assembly . . .

With these differences and passions so heated as they are at present, it seems to me that they are  
20 approaching a very dangerous crisis. I hear on good authority that one of those most frequently about him [King James] told him that if he does not now stand upon his dignity and authority and does not do what he said he would in this letter, he will have to submit  
25 to their rule ever after, and will no longer be King except in show and appearance only, like the chief of a republic, without authority.

8. *Calendar State Papers, Domestic, James I., 1619-*

23.

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Page 326.

[Dec. 30 (?), 1621.] Account of the King's coming to Council, and calling for the Clerk of Parliament to produce the Journal Book of the Commons, in which  
5 was recorded the protestation of privileges. He declared himself offended with it, because it was drawn up after his repeated assertions of his wish to preserve all the liberties of the House, and at the very time when he was receiving a deputation from them  
10 and promising compliance with their wishes for an adjournment, and because it was put to the question at six o'clock at night, when not a third of the members were present; also that it contains words which may be construed so as to invade most of the  
15 prerogatives of the crown; therefore in a full assembly of Council and in presence of the Judges, his Majesty erased it from the Journal Book with his own hand, and ordered an Act of Council to be entered thereof.

20 [Sir Edward Coke, Sir Robert Phelips, and Sir Edward Mallory were committed to the Tower, and the first two questioned by members of the Council about their speeches in Parliament.]

9. *Notes of the Parliament of 1626* (Whitelocke).

25 [On May 8, 1626, the Commons instituted impeachment proceedings against the Duke of Buckingham, minister of Charles I., and asked for a conference with the Lords. In that conference eight members of the Commons were commissioned to be managers for the Lower  
30 House—*i. e.*, to present the charges made by that House.

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Sir Dudley Digges the first speaker unwisely mentioned the death of James I., who was believed by many people at that time to have died from the effects of a plaster administered to him, and alluded to Buckingham's supposed  
5 part in that transaction. It was reported to the King that Digges had said "that he would therein spare the honor of the King." Sir John Eliot was the last speaker and made a very bitter attack upon Buckingham, comparing him to Sejanus, the minister of the Roman Em-  
10 peror Tiberius. "If he is Sejanus" the King was reported to have said, "then I am Tiberius." Eliot had said many other hard things. When the Commons met on May 11th, Digges and Eliot were absent, and it was soon discovered that they had been called to the door  
15 and taken to the Tower.]

[May 12th.] Mr. Speaker put the House in mind where they left yesterday. The House cry, No.

*Mr. Wilde.* . . . Bewail the want of two whose excellent abilities, whose indefatigable labors for pre-  
20 serving these liberties have been fresh in our memories. The cause of their absence I cannot but be bold to desire to know. . . . Moves we may consider of some way of remonstrance or declaration to the King concerning this, and desire we may have our  
25 members again, and that we may punish them if they have done any offence within our cognizance. That we appoint a committee for this.

After long silence *Mr. Speaker* riseth and said, I am sorry to see so general sadness and silence. The  
30 House cry, sit down! But the Speaker goes on and repeats the motion.

## Freedom of Speech

[*The*] *Vice-Chamberlain* [Sir Dudley Carleton] . . .  
Our evils are the losses of some members of our  
House; the causes a high offence the King takes at  
. . . words that passed in that speech, some words in  
5 the prologue [spoken by Digges] "that he would then  
spare the honor of the King that is now living." . . .  
I cannot say these were the words but some strangers  
in our Court would say it, and this depends upon  
the point of true or false information. . . . This man-  
10 ner of Parliament hath been almost in every state in  
Christendom, but hath been altered by new counsels.  
To preserve this liberty the medium between right  
of prerogative and tumultuary liberty must be ob-  
served.<sup>1</sup> Moves that the Speaker may leave this  
15 chair and we resolve ourselves into a committee  
for consideration of the remedies.

Resolved that we shall lay aside all other business  
till we are righted in our liberties. And the House  
shall presently resolve into a committee to consider  
20 of the ways and means to effect it.

<sup>1</sup> In another account (*Parl. Hist.*, VII, 160) Carleton's implications appear more clearly. "In all Christian kingdoms you know that Parliaments were in use anciently, by which their kingdoms were governed in a most flourishing manner until the monarchs  
25 began to show their own strength, and seeing the turbulent spirits of their Parliaments, at length they, little by little, began to stand upon their prerogatives, and at last overthrew the Parliaments, except here only with us." Carleton went on to compare the miserable state of foreign peasants with those in England "like so many  
30 ghosts and not men," and hinted that the same might come true in England. But the account here quoted is probably more nearly what Carleton said. (See Lonsdale MSS., p. 23.)

## Source Problems in English History

Mr. Rolles takes the Chair.

*Mr. Wandesford.* I think this root hath sprung from the same root which all the rest have done, misinformation. . . .

- 6 *Sir John Savile.* I was committed out of this House sitting [in] Parliament, and being a member of this House, and after three weeks imprisonment I was at the Council Board and they asked me why I sued not for my liberty. I said I knew not why I was  
10 committed and they told me that if I would know I must ask the Queen, and so sent me back again to prison, but after in the Parliament, they only petitioned or made a remonstrance to the Queen and I was released. But they would not determine whether  
15 the privilege of Parliament was broken hereby, nor the cause of my commitment was not known to them.

- Sir Thomas Hobby.* That Sir John Savile was committed, before the Parliament sat, by the Council Table. . . . Our remonstrance must be that this is  
20 unprecedented, that we are grieved much at it and desire that if the commitment be for anything done at the Conference that we may examine it, and determine their punishment, if their fault be within our cognizance.

- 25 *Sir John Savile.* That he was committed fourteen days after the Parliament sat and taken as he was coming into the House.

Resolved that we shall present a remonstrance to the King touching the imprisonment of these two members.



## Freedom of Speech

[May 13th.] Mr. Rolles in the Chair.

*Mr. Littleton* reports from the Sub-committee. . . .  
The matter whereupon the King took offence at Sir  
Dudley Digges that he should say by the command-  
5 ment of the House upon the particular the plaster  
applied to his late Majesty that he forbore to speak  
any further in regard of the King's honor, or words to  
that effect. The Committee found this a matter of  
too great weight for their consideration. [They refer  
10 it to the Grand Committee of the Whole House.]

*Mr. Littleton.* I . . . protest before God and the  
body of the Commons by the faith of a Christian  
that I heard not these words nor any to this effect.

Resolved that there shall be a solemn protestation  
15 and [that] it shall be contained in the protestation  
that every man shall say whether he did consent  
that those words or any words to such effect should  
be spoken by Sir Dudley Digges, or did hear any  
such words spoken by him. . . .

20 Clerk shall call them by the book.

[May 15th.]

[A conference asked with the Lords on matters of "importance concerning the honor of both Houses."]

[May 16th.] *Sir Dudley Digges*, being at liberty  
25 and sitting in the House . . . gives thanks to the  
House for their care of him, a poor member, and  
makes his protestation that those words were never  
in his thoughts. . . .

## Source Problems in English History

*Chancellor of the Exchequer* [Sir Richard Weston]

... In the case of Sir John Eliot, his business is something of another nature. His Majesty believes that he exceeded his commission of this House; charges  
5 him with some things that are extra-judicial to this House, and if he detain him somewhat longer, he hopes you will not take this as a breach of the privilege of this House and desires that you would proceed with the business of this House.

10 *Sir John Strangeways* moves that the word *extra-judicial* might be understood and explained.

Resolved to take the King's message into consideration to-morrow morning.

[May 20th.] *Sir John Eliot* sent for. Comes in  
15 and takes his place.

*Sir Peter Hayman* moves that Sir John Eliot's charges may be made known to us.

[The Vice-Chamberlain addresses the House on the charges. The Speaker puts the charges one by one and  
20 Eliot denies or explains them. Resolved by question that Sir John Eliot hath not exceeded his commission which he had from this House in anything which he spake at the Conference with the Lords concerning the impeachment of the Duke of Buckingham. The same kind of  
25 resolutions were voted about Digges.]

10. An Account of the Debate in Parliament on June 5, 1628. (Put together from three Sources.)

a. Sir Richard Grosvenor's *Journal*.

b. *Borlase Manuscript of the Parliament of 1628*.

30 c. Rushworth, *Historical Collections*, I, 605-610.

## Freedom of Speech

[The Commons wished in 1628 to enact a law under which the King's ministers could be punished if they repeated their past arbitrary acts. But the King forced them to the weaker procedure of petition. The result  
5 was the famous Petition of Right. It was a clear-cut and forceful statement of principles, but it was not wholly satisfactory as an immediate and practical remedy for abuses. Eliot, as leader of those who were most intent upon bringing the Duke of Buckingham to account,  
10 waited only for the King to answer the Petition of Right to begin his attack. His speech of June 3d led to plans for a remonstrance. When the King got wind of this he sent his message of the 5th.]

[*Rush.*] Another message was brought from his  
15 Majesty by the Speaker. . . . His Majesty . . . requires them that they enter not into or proceed with any new business, which may spend greater time, or which may lay any scandal or aspersion upon the state, government, or ministers  
20 thereof.

[*Borl.*] *Sir John Eliot.* . . . I perceive in the message this sad particular that those things which were appointed to have been the work of this day are suspected as scandals or aspersions. I think the chief  
25 work of this day was to propose ways of vindicating his honor. I doubt he thinks we mean his own ministers which are no way equal to aspersions laid upon his people.

*Mr. Speaker.* A strict command lies upon me  
30 from his Majesty that you do not meddle with par-

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ticulars. I beseech you take heed and do not blame me for telling you so.

[*Grosv.*] *Sir Dudley Digges*. . . . The message was of this nature, and so contrary to the fundamental  
5 liberties of this House that he wished Sir John Eliot to cease further speaking and that we might sit in silence.

*Sir Nath[aniel] Rich*. This is the most remarkable time, the most noted occasion that was ever in Par-  
10 liament. . . . Either we must now speak or forever hold our peace. . . . I move to go altogether to the Lords House there to declare the violation of liberties of England. . . .

*Mr. Pym* . . . moved for a committee to resolve  
15 of the several heads of the violation of the liberties, of the danger of this kingdom.

*Sir Robert Phelps*. This may be the last time I shall speak in this House. No fear that can befall me through misinformation from my sovereign, for  
20 my heart shall be right to him, my prayers shall be directed to God for him (here he wept). . . . Moved that we may with one unanimity declare each man that nothing hath passed unfit or undutifully from any member of this House; which was  
25 by question done.

*Sir Ed. Giles*. We sit as men daunted. Let us put on the spirit of Englishmen and speak to purpose. . . .

[By question resolved into a grand committee to

## Freedom of Speech

consider what was fit for the House to do about the message.]

[*Borl.*] *Mr. Speaker* desired leave upon the naming of some one to sit in the chair for the committee  
5 to leave the House for half an hour.<sup>1</sup>

Mr. Whitby in the Chair.

[*Grosv.*] *Mr. Wansford*. . . . Wished all of us to recollect our spirits and to do that which shall be fit for Englishmen. . . . Two propositions, whether to go to  
10 the King or to the Lords. I think it not fit [to go] to the Lords. This business principally concerns our own liberties. . . . If we must not speak of ministers, what must we do? Moved to make a remonstrance of our right to speak of our griefs and of ministers  
15 ill deserving. . . . Moved to go to the King and acquaint him what we were about; to tell him that which none else durst.

[*Rush.*] *Sir Edward Coke* [quotes the precedents to show that men who misled the King may be attacked  
20 in Parliament]. Nothing grows to abuse but this House hath power to treat of it. What shall we do? Let us palliate no longer; if we do, God will not prosper us. I think the Duke of Buckingham

<sup>1</sup> A manuscript account of this Parliament in the possession of  
25 the Massachusetts Historical Society says of the Speaker's departure: "Note that the Speaker, seeing the House so moved in the morning and none scarce able to speak, and himself also in that condition, desired leave to go out awhile, which was granted, and he went to the King and stayed with him till near 12 of the clock and then re-  
30 turned." Fol. 218verso. Rushworth says he was absent three hours.

## Source Problems in English History

is the cause of all our miseries . . . that man is the grievance of grievances.<sup>1</sup>

[The Commons then proceed with their remonstrance, just what they were forbidden to do by the  
5 message.]

[June 6th. Mr. Speaker brings another message from the King. . . .]

His Majesty understanding that ye did conceive that his last message to restrain you in your just  
10 privileges to complain of any of his ministers; these are to declare his intentions, that he hath no meaning of barring you from what hath been your right, but only to avoid all scandals on his Council and actions past, and that his ministers might not be,  
15 nor himself, under their names, taxed for their counsel unto his Majesty, and that no such particulars should be taken in hand as would ask a longer time of consideration than what he hath prefixed.

[In the short session of Parliament in 1629 that followed  
20 Buckingham's murder, the Commons attacked Charles's ecclesiastical policy and his claims to tonnage and pound-

<sup>1</sup> Rushworth copies a very interesting letter about this day's session written by Mr. Alured to "old Mr. Chamberlain of the Court of Wards." He tells of the King's message and goes on:  
25 "Then Sir Robert Phelips spake and mingled his words with weeping. Mr. Prynne [Pym] did the like, and Sir Edward Coke, overcome with passion, seeing the desolation likely to ensue, was forced to sit down when he began to speak through the abundance of tears; yea the Speaker in his speech could not refrain from weep-  
30 ing and shedding of tears; besides a great many whose great griefs made them dumb and silent. Yet some bore up in that storm and encouraged others."

## Freedom of Speech

age. On March 2d the King sent an order adjourning Parliament until the 10th. The Commons, fearing that a dissolution would follow, determined to bring in a declaration concerning religion and tonnage and poundage. 5 The Speaker was just leaving the chair in accordance with the order for an adjournment when Denzil Holles and Benjamin Valentine took hold of him and kept him in his seat while Sir John Eliot rose to move three resolutions which he and his friends had drafted. A fearful 10 tumult ensued, but the resolutions read by Holles were passed. Then the doors were unlocked and the armed officers of the King walked in. It had been a stormy scene, and the sequel was the prosecution of Holles, Valentine, and Eliot. Informations against them in the 15 Star Chamber were transferred to the Court of the King's Bench. There they were prosecuted for conspiracy, and Eliot in addition for seditious words in Parliament.]

11. Cobbett's *State Trials*, III. (Proceedings against Sir John Eliot, Denzil Holles, Esq., and Benjamin Valentine, Esq., for seditious speeches 20 in Parliament. 1630.)

Pages 293-294.

Sir Robert Heath, the King's Attorney-General, exhibited informations . . . that the said Eliot publicly and maliciously in the House of Commons, to 25 raise sedition between the King, his nobles and peoples, uttered these words, "That the Council and Judges had all conspired to trample underfoot the liberties of the subjects."

30 [The attorney further alleges that the three above mentioned were guilty by "confederacy aforehand" of uttering

## Source Problems in English History

a long-continued speech, with malicious and seditious words, of holding the Speaker in his chair, etc. The defendants pleaded . . . that these offences had been done in Parliament and ought not to be punished in any other court. The judgment of the Court was pronounced as follows]:

Pages 309-310.

The matter of the information now, by the confession of the defendants, is admitted to be true, and we think their plea to the jurisdiction insufficient for the matter and manner of it. And we hereby will not draw the true liberties of Parliament men into question; to wit, for such matters which they do or speak in a parliamentary manner. But in this case there was a conspiracy between the defendants to slander the state, and to raise sedition and discord between the King, his peers, and people, and this was not a parliamentary course. All the judges of England except one have resolved the statute of 4 H. 8 [Stroke statute<sup>1</sup>] to be a private act, and to extend to Stroke only. But every member of the Parliament shall have such privileges as are there mentioned; but they have no privilege to speak at their pleasure. The Parliament is an high court, therefore it ought not to be disorderly, but ought to give good example to other courts. If a judge of our court should rail upon the state, or clergy, he is punishable for it. A member of the Par-

<sup>1</sup> See The Setting, p. 172.



## Freedom of Speech

liament may charge any great officer of the state with any particular offence; but this was a malevolous accusation in the generality of all the officers of state, therefore the matter contained within the information is a great offence, and punishable in this court.

[The three were to be imprisoned during the King's pleasure, to pay heavy fines, and not to be delivered until they gave security for good behavior and acknowledged their offences.]

12. *Commons Journals*, II. (July 6, 1641.)

Page 200.

Resolved, that the exhibiting of an information in the Court of Star Chamber against Mr. Holles and the rest for matters done by them in Parliament, being members of the Parliament, and the same so appearing in the information, is a breach of the privilege in Parliament.

[July 8, 1641.] Resolved, that the exhibiting of the information against Mr. Holles, Sir John Eliot and Mr. Valentine in the King's Bench, being members of the Parliament, for matter done in Parliament, was a breach of the privilege of Parliament.

13. *Lords Journals*, XII. (Dec. 11, 1667.)

Page 164.

Next the Lord Chamberlain and the Lord Ashley reported the effect of the conference with the House of Commons yesterday, which was managed by Mr. Vaughan, who said,

## Source Problems in English History

He was commanded by the House of Commons to acquaint their Lordships with some resolves of their House concerning the freedom of speech in Parliament, and to desire their Lordships' concurrence  
5 therein. [Vaughan discusses in detail the trial of Eliot, Holles, and Valentine before the King's Bench, as well as its relation to the Strode case of 1512.]

[After this the Votes were read, vid.]

10 Page 166.

"Resolved that the Act of Parliament . . . commonly entitled 'An Act concerning Richard Strode,' is a general law. . . .

15 "Resolved that the Judgment given . . . against Sir John Eliot, Denzil Holles and Benjamin Valentine, Esquires, in the King's Bench, was an illegal judgment, and against the freedom and privilege of Parliament."

20 [To both which votes the Lords agree with the House of Commons.]

14. The student should read in conclusion the article in the Bill of Rights concerning free speech (See App., p. 406).

## PROBLEM VI

VI.—The English Parish and the New England  
Town-Meeting



# The English Parish and the New England Town-Meeting

## I. THE HISTORICAL SETTING OF THE PROBLEM

THE parish of the seventeenth century was a singular combination of the ecclesiastical and the secular. It was ecclesiastical in its origin. The powerful man who gave land for a church and for the living of the clergyman was providing for the people on his estate; the church was looking to it that every vill had its church and priest. Hence in the south of England the parish came to be, at least in the country, coterminous with the manor or vill. In the north the parish sometimes included several vills. But however related to the vill, the parish was an ecclesiastical unit and at first no more than that; it was the territory which included those people over whom the priest exercised spiritual care, but that territory was not necessarily continuous. There are evidences that some time about the fourteenth century a new function began to develop in the parish; it came to have a vestry—*i. e.*, a meeting of parishioners, usually after church on Sunday. Maitland has suggested that the vestry, like Parliament, arose from the need of money. The repair of the church and the up-keep of appurtenances were met at first perhaps by voluntary contribu-

## Source Problems in English History

tions. But when a good deal of money had to be secured the parishioners were called together by the priest now and again for consultation. They were called together until one fine day they had acquired the right to be summoned and to vote "rates." The voting of rates meant that there was church property to look after, and so we naturally find churchwardens appearing whose duty it was to maintain the church and to keep track of its "temporal estate." They were selected by the vestry and performed functions purely secular.

The parish had originated as an ecclesiastical unit. It had been superimposed upon a secular local unit, the vill or manor. With the decline of feudalism and with the growing needs of more local government the secular functions necessary to a community were superimposed upon the ecclesiastical framework. This can be seen in the offices of petty constable, of the surveyors of the highways, or "waymen," and of the overseers of the poor. As the manorial courts lost their influence the police duties which had been attached to them were put upon the parish. The petty constable or "borsholder"—the successor of the tithing-man—who was to maintain the peace had become in many cases, at some time before the sixteenth century, a parish official. The surveyors of the highways, who were subordinate to the churchwardens, appear under the Tudors, as do the overseers of the poor. By the last half of the sixteenth century the parish had in this manner become an institution more important in its secular than in its ecclesiastical functions. It had indeed become something more than an ecclesiastical institution upon which secular functions had been imposed; it had become a means of local self-government, it had made possible the Elizabethan Poor Laws.

It was never, however, to become quite what it might

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have been, or what the New England town was to become. Its growth as a self-governing unit was contrary to the tendency of Tudor rule. Already through the justices of peace the Tudor government was reaching out long fingers for the manipulation of the parishes. And the vestry, a thoroughly democratic mechanism, had already begun in some communities to give place to a more exclusive organization. The select vestry was to grow up within the vestry, as the cabinet within the council, and was to fall heir to the functions of its parent. This process, however, was slow and cannot be said to have gone far or to have become general—it never did become universal—by the time of the Stuart period.

It was during the reign of the early Stuarts that New England was settled. There, as settlements spread out from Plymouth or as they were made around Massachusetts Bay, the pressure of local needs made local government necessary. Rights of pasture had to be determined, land had to be divided up, "towns" were organized. It is not surprising that the form and functioning of these towns should remind us of English parishes of the time. We meet in New England with officials whose titles are familiar; those officials have duties very similar to the duties performed in the parish. Even a brief examination of the features common to the English and the New England institution makes it evident that a comparison is worth while. In that comparison it must not be forgotten that the people of New England were living in primitive conditions long since outgrown in England.

The New England town became, as has been said, a more important organ of local government than the English parish had ever been. It is not difficult to see why. The New England town was not overshadowed by the

## Source Problems in English History

county—it had hardened into shape before the county became important—it was not interfered with by the justices of peace, at any rate not until later. Nor was the town-meeting robbed of its functions by a meddling central government. Its democratic tendency was reinforced by the popular character of the church government which Puritanism brought in its train. As a result the town became a most important fiscal, military, and political unit and the town-meeting became a characteristic feature of New England life.

The following extracts touch only a few of the manifold activities of the English parish and of the New England town. It is hoped that they are full enough to indicate some of the similarities and some of the differences.

### II. INTRODUCTIONS TO THE SOURCES

It will be readily seen that the source materials used in this problem are of three kinds. Sources 1, 2, and 3 belong to a rather unusual type. They are descriptive works of lawyers, compilations based upon the statutes of Parliament, the canon law, and the decisions of the judges. The writers endeavored to give expositions of the law and custom about local officials and to do it without personal or partisan basis.

A second type of material is exemplified by sources 4, 5, 6, 7, and 9. Here are records of the meetings of parish, town, and selectmen. Such official documents are of course much safer evidence as to how local institutions worked than the observations of lawyers, save where they are quoting from the law.

A third type of material is to be found in Source 8, John Winthrop's *Journal*. Winthrop left an invaluable



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diary of events in Massachusetts. He was a chief participant in the events he tells about and he was a pains-taking kind of man.

1. *The Duties of Constables, Borsholders, Tything-men and such other Low and Lay Ministers of the Peace, whereunto be adjoyned, the severall offices of Church Ministers and Churchwardens, and Overseers for the Poore, Surveighours of the highwaies, and distributors of the provision against noysome fowle and vermine. First collected (1581) by William Lambard of Lincolnes Inn, Gent., and now enlarged in the year 1604.* London, 1604.

2. *The Offices and Duties of Constables, Borsholders, Tything-men, Treasurers of the County-stock, Overseers for the Poore and other lay-Ministers.* By William Sheppard, of the Middle Temple, Esq. London, 1641.

3. *A Guide for Constables, Churchwardens, Overseers of the Poor, Surveyors of the Highways, Treasurers of the County Stock, Masters of the House of Corrections, Bayliffs, of Mannours, Toll. Takers in Fairs, etc.* Collected by Geo. Meriton, Gent. London, 1669.

4. *The Annals of St. Helen's, Bishopsgate, London.* Edited by the Rev. John Edmund Cox, D.D., London, 1876. Includes Vestry Records from 1558 to 1812.

5. *Illustrations of the Manners and Expences of Antient Times in England, in the Fifteenth, Sixteenth, and Seventeenth Centuries, Deduced from the Accomts of Churchwardens, and other Authentic Documents.* Collected from various parts of the Kingdom, with explanatory notes. By John Nichols, London, 1797.

Our sources quote from this volume the Churchwardens' accounts of St. Margaret's, Westminster, and of Wigtoft, Lincolnshire. Nichols took his copies from MSS. preserved in the churches.

6. *Boston Town Records, 1634-1661.* (Published from

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the MS. records kept by the town clerk.) *Second Report of Boston Record Commissioners.* Boston, 1877.

7. *Records of Boston Selectmen, 1701-1715. Report of the Record Commissioners of Boston.* Boston, 1884.

8. *Winthrop's Journal "History of New England," 1630-1649.* 2 vols. Ed. by J. K. Hosmer, New York, 1908.

9. *Town and Selectmen's Records, Newtowne and Cambridge, 1630-1703.* Printed by order of the city council under the direction of the city clerk. Cambridge, 1901.

### III. QUESTIONS AND SUGGESTIONS FOR STUDY

1. Who were the chief executive and administrative officers in town and parish?
2. What were the duties of these officers? How was each chosen?
3. What was the chief legislative body of the parish? Of the town? Compare them as to power exercised.
4. What part did the justice of peace play in parish affairs? By whom were the corresponding functions exercised in the town?
5. What about the exercise of judicial power in parish and town?
6. Compare the elective power of the vestry and the town-meeting.
7. Do you find anything in the sources about the parish that seems to be like a select vestry?
8. Compare the appointing power of the churchwardens and selectmen.
9. What persons were liable to service as constables? What persons were liable to serve in the other offices?
10. What provisions were made for military protection and training in parish and town?
11. What provisions were taken to prevent persons who might become a public charge from entering the parish or town?

## The Parish and the Town-Meeting

12. By what process were they relieved from the presence of undesirable persons?
13. How were rates made in each? For what were they made?
14. Compare the excise regulations in the two.
15. How were highways and bridges cared for in each?
16. What precautions were taken to prevent fires?
17. How were the rights of individuals sometimes subordinated to those of the community at large?
18. What provisions were made for the care of the poor in each?
19. What provisions were made for education?
20. What provisions were made for the support of the clergyman in the town? in the parish (where there was no benefice or endowment)?
21. Make a list of all the officers of the parish and of the town and of their several duties.

## IV. The Sources

1. Lambard: *Duties of Constables*. [1604.]

Page 5.

So then, the name of constable in a hundred or franchise doth mean that he is an officer that supporteth the King's Majesty in the maintenance of his peace, within the precinct of his hundred or franchise; and he is many times called the high-constable, in comparison of the constables, or petty constables, that be in the towns or parishes within his hundred or franchise: whose part it likewise is, to maintain the peace within the several limits of their own towns or parishes. . . .

Page 12.

But now, for the better preventing that nothing be done against the peace, any of these officers aforesaid [constables, etc.] may take or arrest suspected persons, which walk in the night and sleep in the day. . . . Any of these officers may also arrest such strange persons as do walk abroad in the night season: and for that cause the said statute of Winchester did ordain that night watches should be kept yearly from the feast of the Ascension until

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Michaelmas, by six men at every gate of every city, by twelve men in every borough town, and in every other town by six men or four men, according to the number of inhabitants in the town, all  
5 the night long, from sun setting to sun rising. . . .  
And of these watches the officers beforenamed have the charge within the limits (or places) of their authorities. . . .

Page 19.

10 Albeit then, that their said officers [constables] be subject to the commandments . . . of other officers . . . yet because most commonly they are called upon by the justices of peace, they ought specially to show themselves obedient to their precepts, who (as it may  
15 appear by some old precedents) have authority to remove insufficient constables and borsholders, and to substitute able persons in their place. . . .

Page 30.

The constables of hundreds and franchises ought  
20 to make presentment to the justices of peace and to all other justices thereto assigned, of the defaults of watches, and of the defaults of the King's highways, . . . and also of such as lodge strangers in uplandish towns, for whom they will not answer. . . .

25 Page 37.

In default of agreement of the parishioners between themselves, the constables and churchwardens of each parish (or the more part of them) may rate and allot within their parish their assessment for

## Source Problems in English History

the stock of the shire wherewith that parish was charged at the Quarter Sessions: and they also may levy the same upon any parishioner, by distress, and sale of his goods, tendering the overplus unto  
5 him, 43. Eliz. cap. 2. & 3. . . .

Page 49.

Every city, borough, and market town, that have a constable, ought also to have common measures sealed, and also common weights sealed, at which  
10 the inhabitants may freely weigh. . . .

Page 50.

Those four justices of peace that be authorized by the statute to make taxation of money for the amendment of any decayed bridge in the highway,  
15 ought to make that taxation by the assent of the constables or two of the most honest inhabitants of every town or parish.

In all cities, boroughs and towns wherein no wardens of cowpers [coopers] be, [the constables or head  
20 officers] have power to search, view and gauge barrels, kilderkins, firkins and other vessels. . . .

Page 60.

The churchwardens of parishes be taken (in favor of the church) to be for some purposes a manner of  
25 corporation at the common law: that is to say, persons enabled by that name, to take movable goods or chattels and to sue and be sued at the law, concerning such goods for the use and profit of their parish. . . .

## The Parish and the Town-Meeting

[If they wasted or misspent the parish money the parishioners might bring suit to force a reckoning and could remove them by the election of new churchwardens.]

5 Page 64.

All persons inhabiting within the King's Majesty's Dominion shall diligently and faithfully (having no lawful or reasonable excuse to be absent) endeavor themselves to resort to their parish church  
10 or chapel accustomed . . . [on penalty of fine].

Page 65.

The constables and churchwardens of every parish shall yearly . . . call together a number of the parishioners, and shall then elect and choose two  
15 honest persons of the parish to be surveyors and orderers of the works for one year, for amendment of the highways in their parish, leading to any market town; which persons shall take upon them the execution of their said offices [upon penalty of  
20 XXs]. And the said constables and churchwardens shall then also name and appoint six days for the amendment of the said highways before midsummer then next following; and shall openly in the church the next Sunday after Easter give knowledge of the  
25 same six days. [All persons holding land in the parish were to furnish service in men, horses and find carts in proportion to the amount of land held.]

Page 67.

The churchwardens and four, three, or two others

## Source Problems in English History

of every parish, appointed by the two justices of peace to be overseers of the poor there (or the more part of them), may by the consent of two justices, from time to time take order for setting to work all  
5 persons married or unmarried that have no means or ordinary trade to live by, and the children of such parents as shall be thought unable to maintain them. . . .

Page 78.

10 Every person or persons that shall not repair, ditch, or scour any hays [hedges], fences, ditches, or hedges adjoining to any highway or common faring way or shall not cut down or keep low all trees and bushes, growing in or next adjoining to any the said ways . . .  
15 shall forfeit and lose for every default Xs. . . .

Page 89.

And if any innkeeper, alehouse - keeper, or victualer shall at any time utter or sell less than one full ale quart of the best beer or ale for a penny, and  
20 of the small, two quarts for one penny, that then every such . . . shall forfeit . . . the sum of XXs. . . . All and every the said penalties to be levied by the constables or churchwardens. . . .

2. Sheppard: *Offices and Duties of Constables*. [1641.]

25 Page 17.

And if because the common course is everywhere to put these offices upon the meaner sort of men, the more able sort do think themselves thereby exempted, they are therein much deceived.



## The Parish and the Town-Meeting

Page 87.

None may purposely, by word or deed (as by talk-  
ing, laughing, hemming, or the like) without authority,  
disturb a Minister in his preaching of the word, [or in  
5 any church service]; and if any do so, any one of the  
constables or churchwardens of the place may of his  
own authority presently apprehend him, and carry  
him to a justice of peace of the same county. . . .

Page 128.

10 If any person without lawful license take upon him  
. . . to keep a common alehouse or tippling-house,  
or use commonly selling of ale, beer, cider, or perry,  
he shall forfeit for every such offence 20s. to the  
use of the poor of the place. . . .

15 Page 205.

If all this labor appointed by the statutes to be  
bestowed on the highways be not sufficient for the  
amendment thereof, the parish must supply it; for  
the parishioners of every parish are to look to their  
20 highways that they be well repaired and kept at  
their peril. . . .

Page 219.

No man is to be put out of the town where he  
dwelleth, nor to be sent to his place of birth or last  
25 habitation but a vagrant rogue. . . . And if they be  
not able to work, they must be relieved there [in  
the parish of their legal residence]. . . .

Page 226.

When officers are to make any rates, they shall

## Source Problems in English History

do well first of all to give public notice in the church of the time and place, when and where they intend to make the same (for this in the case of church-rates is necessary) and then if the parishioners will  
5 meet, they may; if not, the officers and those that do meet, may make the rate. The rates must not be extended beyond the parish, neither may the overseers rate other parishes towards the rates of the poor of their parish. . . .

10 Page 232.

In some special case a man may be rated beyond his ability; for if a parishioner for his own gain or otherwise, shall bring into the parish without the consent thereof, a stranger who is, or is apparently  
15 like to be burdensome to the parish; in this case the parishioners (because they have no other remedy against him) may rate him not only according to his ability of lands and goods, but according to the damage he bringeth, or is like to bring to the parish  
20 by his folly. . . .

Page 281.

[Ministers] must upon every Sunday and holiday, before evening prayer, for half an hour or more examine and instruct the youth and ignorant per-  
25 sons of their parish in the Ten Commandments, the Articles of the Belief, and in the Lord's Prayer; and shall diligently hear, instruct, and teach them the catechism, set forth in the Book of Common Prayer. . . . And every man is bound to send his children and

## The Parish and the Town-Meeting

servants, and they are bound to come, being sent, to be catechised. . . . The Minister is every Sunday to set down the names of all that are christened, married, or buried, the week before within his  
5 parish. . . .

Page 314.

It is thought also, that they [Ministers] ought to have (and may recover where they may have not) a competent allowance and maintenance out of the  
10 tithes of the parish wherein they serve. . . .

Page 326.

They [churchwardens] are to order the seats in the church and to appoint every man and woman where they shall sit. . . . [They may make rates] . . . [these]  
15 rates are not to be made for the raising of money, before there be need. . . .

3. Meriton: *A Guide for Constables*, etc. [1669.]

Page 41.

Those officers under the commissioners of excise  
20 called gaugers are to have the constable along with them when they enter by night into the houses of any brewer, innkeeper, victualer, etc., to gauge their coppers, vats, or vessels, or to take an account of their beer. . . .

25 Page 63.

The constables by warrant to that purpose, under the hand and seal of the Lord Lieutenant, or any three or more of the Deputy Lieutenants, are to levy such sums, forfeitures, penalties and payments, as

## Source Problems in English History

shall be charged upon any person or persons within their several constabularies, for the furnishing of arms, horse, or foot, or payment of soldiers, according to the Acts for the Militia. . . .

5 Page 97.

If any person or persons shall profanely curse or swear, for every time so offending they [shall] forfeit twelve pence. . . .

Page 137.

10 These officers [churchwardens] are to see that the church and churchyard be well repaired and kept clean; and they are to provide Books of Common Prayer, books of homilies, a parchment book for registering christenings, weddings, and burials in,  
15 fonts, pulpits, tables, chests for alms, communion cups, ornaments, and other furniture; and a chest with three locks and keys for putting the same in; and they are also to provide bread and wine for the Sacrament according to the number of the communi-  
20 cants. And for these purposes they may rate the parish for money to do it. . . . [The churchwardens] together with the constables, overseers of the poor, and surveyors of the highways of every parish [in London] respectively, or the greater number of them,  
25 giving notice unto, or calling together such other inhabitants of their respective parishes as have formerly borne the like offices, they . . . are to make choice of and shall nominate and appoint two or more able persons, that are tradesmen of their

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parish, to be scavengers for the streets, lanes, and other open passages . . . within the said parish. . . .

Page 175.

As touching settling of poor people: note that  
5 the justices are to meddle with [to eject] none but those who are impotent, and such as are like to be chargeable to the place where they are. . . . And as to this, know that it is enacted by the 14. Car. 2. Ch. 12. that if any stranger come into a parish to settle  
10 there in any tenement, under £10 a year, and he refuse to give such security for the discharge of the parish as two justices shall think fit, then any two justices . . . may upon complaint to them made by the churchwardens or overseers, within 40 days  
15 after the stranger come into the parish, make their warrant to send him to the place where he was last legally settled as a native, householder, sojourner, apprentice or servant 40 days or more. . . .

4. *The Annals of St. Helen's, Bishopsgate, London.*

20 Page 100.

At a vestry kept by the parishioners of St. Helen's, upon Sunday, the second day of October, A.D. 1558.

Imprimis. It is ordained that a book of paper be prepared wherein all orders concluded at any vestry  
25 may be entered and put in writing.

Item. That the youngest churchwarden for time being shall be bound to enter or cause to be entered the said orders in the said books within xiv days after, upon pain of Vs.

## Source Problems in English History

Item. That the said parishioners shall yearly assemble together upon the Sunday next after the feast of St. Michael the Archangel,<sup>1</sup> to elect, and choose the churchwardens for the year following,  
5 the said assembly to be duly called by the churchwardens upon the pain of Vs.

Item. That the old churchwardens shall make yearly a good and perfect account of their office before the said parishioners upon Sunday next after  
10 the feast of All Saints, upon pain to forfeit and pay the sum [of] 3s. 4d. if he have no lawful excuse. And any Sunday after as much until they have made their said account. The said sum or sums of money to be levied to the use of the said parish  
15 church.

Item. That if any parishioner of the said parish be duly warned by the churchwardens to come to any vestry to be kept by the said parishioners, and do make default, that then he or they, having no  
20 good lawful excuse, shall forfeit for any such default the sum of 2d. to the use of the parish.

Page 102.

[May 4, 1561.] Thomes Odyll and George Lodge are elected to be collectors for the poor people for  
25 this year following.

[Dec. 21, 1561.] This day were chosen common officers for the year following, viz.: Thos. Colshill for the Common Council; Richard Kirke and Edmund

<sup>1</sup> *I. e.*, Michaelmas, September 29th.

## The Parish and the Town-Meeting

Stone for the Wardmote Quest; <sup>1</sup> John Edwards, constable; George Gray, scavenger; Kylbye, beadle. [Sexton, parish clerk, churchwarden, conductor of choir, clock-keeper and washer of the church linen  
5 chosen by previous vestry.]

Page 104.

[March 20, 1565.] Item. It is agreed that the curate shall forthwith make a perfect book of all the names of the householders of this parish with  
10 their wife, children, and servant, viz., such as be of the age of 16 years or above, and the same book or a true copy thereof to be delivered to the said Mr. Colshill and Mr. Saunders [churchwardens].

Page 108.

15 1678. Nov. 11. Mr. Hesketh chosen Minister,<sup>2</sup> having 18 votes out of 21.

Page 110.

1689. Dec. 6. Mr. Hesketh's letter being read, it was agreed for a subscription and every one to  
20 subscribe whereby a competent sum may be raised for a subsistence for him, that he may be induced to preach constantly and remain vicar of the parish of St. Helen's.

Page 111.

25 1694. May 24. . . . That the [fire] engine be brought into the church, and the old engine-house

<sup>1</sup> A wardmote quest was the same as a wardmote inquest or a wardmote court—*i. e.*, a court held in every ward in the city of London.

<sup>2</sup> This method of naming the clergyman was not general.

## Source Problems in English History

be pulled down for the better accommodation in burying the dead.

Page 122.

1702. April 7. Mr. Aylward, elected church-  
5 warden, excused [from] all offices on paying the fine of £30, the question having been put whether it should be £25 or £30.

April 10. Mr. Crispe elected; excused on the same conditions.

10 Page 129.

1708. May 5. . . . [Ordered] that the churchwar-  
dens do enquire of the town clerk concerning agree-  
ment made by the proprietors in the Thames water  
for their supplying fire-cocks with their water, for  
15 public benefit, gratis.

Sept. 14. The great [fire] engine ordered to be repaired.

Page 143.

1732. March 10. A request being made by Mr.  
20 Nath. Gould, a parishioner, that this vestry would grant to him and his family the liberty of sitting in the uppermost pew on the left hand of the middle aisle next the communion table: it was resolved that permission be granted during the pleasure of the parish, but when the said N. Gould or his family shall not  
25 be at church, then the said pew shall be filled at the discretion of the churchwardens for the time being.

Page. 149.

1739. Feb. 9. A motion being made whether the



## The Parish and the Town-Meeting

women had a right to vote for a parish clerk or not, and debates arising thereon, this vestry was dissolved.

Nichols, *Illustration*.

5 5. A. Churchwardens' Accounts of St. Margaret's,  
Westminster.

Page 11.

1541. Item, given, by the consent of the Worshipfuls of the parish, of the church-money, towards the  
10 repairing of the highway towards the Eye-cross. . . .

£	s.	d.
3	0	0

Page 13.

1548. Also paid to Philip Lentall, for making clean  
15 of XI pair of harnesses [armor], IX daggers, and VIII bills, prices every harness 1s. 4d.

0	14	0 [sic]
---	----	---------

Also paid to XI men for wearing of the same harnesses at the muster-day. . . .

20 0 5 6

Page 15.

1559. Item, paid for a book of the names of all such persons as were buried within this parish, from Midsummer-day, A.D. 1558, unto Midsummer-day  
25 in the year 1559, delivered to the visitors.<sup>1</sup>

0	2	0
---	---	---

<sup>1</sup> This referred to the representatives of the bishop, who made visits at stated times to inspect the parish and try persons guilty of offences against the canon law.

## Source Problems in English History

Page 18.

1567. Item, paid for a certificate made of all the  
strangers within the parish.                      0   0   6

Page 19.

5    1572. Item, for a new register book, for to write in  
the names of every burial, christening, and marriage,  
that is in the parish.                                 o    5    o

Page 19.

1581. Item, paid for a book of the Abridgment of  
 10 Statutes, to remain in the church.

Page 22.

1589. And the churchwardens aforesaid have delivered the sum of forty pounds in money, which  
 15 was the money given by Mr. Feckenam, late Abbot of Westminster, to the use of the poor of the same parish to buy wood; which sum the said churchwardens have delivered into the hands of the new churchwardens now appointed.

Page 23.

1592. Item, paid to the dog-killer for killing dogs  
the first time of infection.                      0   16   0

Item, paid more to the dog-killer for killing more			
25 dogs.	0	10	10

Page 24.

1595. Item, paid for bread, drink, cheese, fish, cream, and other victuals, when the Worshipful of the parish, and very many others of the poorest sort,

## The Parish and the Town-Meeting

went the perambulation<sup>1</sup> to Kensington, in this hard and dear time of all things, as may appear by a bill of particulars.

7   10   0

Page 27.

- 5   1602. Item, paid to two surgeons, to search a corpse suspected to be of the plague.                      0   6   8

Page 31.

1616. Item, [received] of Sir Richard Wigmore, Knight, for his part of a pew.                      0   13   4

10   Page 38.

1628. Item, [received] of divers persons, the parishioners of this parish, for their fines for swearing, and being drunk, and for breach of the Sabbath, and being otherwise presented according to the penal  
15 laws, as by a particular of their names and several fines appeareth, which hath been employed to the use of the hospital children. . . .                      3   9   4

Page 43.

1634. Item, for drawing and writing out the names  
20 of the inhabitants to make the assessment of the ship-money. . . .                      1   3   4

Page 49.

1642. Item, received out of the black chest at several times for the building of the new pest-houses.

25    200   0   0

<sup>1</sup> By a "perambulation" was meant the walking around a parish once a year to define its boundaries. In Catholic times it took the form of a semi-religious procession of all the inhabitants, but that was later forbidden and the duty was at length turned over to a few  
30 men appointed for that purpose.

## Source Problems in English History

Item, receipts of moneys collected towards the payment for the building of the courts of guard, making posts and chains, and other works for the safety of this town, sum: 50 0 0

5 Page 52.

1645. Item, for seven lanterns to hang in the streets. 0 18 0

Page 72.

1671. Item, [received] of Dr. Busby, to pay Mrs. Hooper, for teaching the parish children three weeks at 2s. 6d. the week. 0 7 6

Page 76.

1686. Item, to Mary Booth, for keeping 8 children 8 weeks at Clerkenwell, at 3s. per week.

15 9 12 0

B. Churchwardens' accounts of Wigtoft, a village near Boston, Lincolnshire.

Page 83.

1487. Item, paid for hooks and hengless [hinges] unto the school-house door, with a key, and for nails to the same door. [Note by editor: "It appears a school was kept in the church at that time, as is the case at this day"—1797.]

6. *Boston Town Records.*

25 Page 2.

[Oct. 6, 1634.] At a general meeting upon public notice given the 5th day of the last week, it was ordered and agreed as followeth: imprimis, Rich. Bellingham, Esq., and J. Cogan, merchant, were

## The Parish and the Town-Meeting

chosen in the place of Giles Firmin, deceased, and Robt. Harding, now in Virginia, to make up the 10 to manage the affairs of the town. [Selectmen.]

Item: Jo. Coggeshall, [and four others], together  
5 with Wm. Cheeseborrowe, the constable, are deputed to make a rate for the levying of £40 assessed upon the town as the first payment of a greater sum by order of the last General Court.<sup>1</sup>

Page 3.

10 [Dec. 18, 1634. Town meeting.] Imprimis, it is agreed that Mr. Winthrop [and six others] shall have power to divide and dispose of all such lands belonging to the town (as are not yet in the lawful possession of any particular persons) to the inhabitants  
15 of the town according to the orders of the Court, leaving such portions in common for the use of new-comers, and the further benefit of the town, as in their best discretions they shall think fit: the islands hired by the town to be also included in  
20 this order.

Page 4.

[March 23, 1635. Town meeting.] Imprimis: it is agreed, by general consent, that the overseers of the fences of the several fields shall see to the  
25 making of such stiles and gates as may be needful for every field . . . the stiles and gates for common highways to be made out of public charge, forth of the constables' hand. . . .

<sup>1</sup> The General Court was the Colonial Legislature.

## Source Problems in English History

Page 5.

[April 13, 1635. Town-meeting.] . . . Likewise it was then generally agreed upon, that our brother, Philemon Pormont, shall be intreated to become  
5 school-master, for the teaching and nurturing of children with us.

Page 5.

[Nov. 30, 1635. Town meeting.] Imprimis: It is agreed that no further allotments shall be granted  
10 unto any new-comers, but such as may be likely to be received members of the Congregation.

Item: That none shall sell their houses or allotments to any new-comers, but with the consent and allowance of those that are appointed allotters.

15 Item: That none of the members of this congregation or inhabitants among us shall sue one another at the law before that Mr. Henry Vane and the two elders, Mr. Thomas Oliver and Thomas Leveritt, have had the hearing and deciding of the cause if  
20 they can.

Pages 7, 8.

[Jan. 23, 1636. Town meeting.] Imprimis: At this meeting, Thomas Marshall, is by general consent, chosen for the keeping of a ferry from the mill  
25 point unto Charl[es]town.

Item: It was likewise agreed that for the raising of a new work of fortification upon the Forthill, about that which is there already begun, the whole town would bestow fourteen days work by equal

## The Parish and the Town-Meeting

proportion. . . . [Commissioners for the work appointed, to apportion money and work from each.]

Page 8.

[Feb. 27, 1636.] At a meeting upon private warning it was agreed that there shall be a watch taken up and gone around with from the 1st of 2d month next, for the summertime, from sunset an hour after the beating of the drum, upon penalty for every one wanting therein 12*d.* for every night.

10 Page 10.

[May 9, 1636. Meeting of the Selectmen.] It was ordered that no townsmen shall entertain any strangers into their houses for above 14 days, without leave from those that are appointed to order  
15 the town's businesses.

Item: It is ordered that none shall keep any victualing houses for the selling of wine, beer, cakes or any other kind of victuals within this town, but only such as are allowed thereunto as innkeepers.

20 Page 10.

[May 13, 1636. Town meeting.] At this assembly Mr. William Hutchinson, Mr. John Coggeshall, and Mr. William Brenton are chosen for deputies or committees for the service of this next General  
25 Court.

Page 10.

[June 6, 1636. Selectmen.] Item: We find that Richard Fairbank hath sold unto two strangers the two houses in Sudbury end that were William Bal-

## Source Problems in English History

stone's, contrary to a former order, and therefore the sale to be void, and the said Richard Fairbank to forfeit for his breaking thereof, xls.

Page 11.

- 5 [Aug. 15, 1636. Selectmen.] It was ordered that John Sampford and William Hudson shall be water baylies, to see that no annoying things, . . . be left or laid about the seashore, . . .

Page 11.

- 10 [Sept. 16, 1636. Town meeting.] At this assembly Mr. Thomas Oliver [and nine others] are, with general consent, chosen [as Selectmen] for these next six months to oversee and set order for all allotments belonging to this town, and for all other  
15 occasions and businesses of the same (excepting matters of election for the General Court) from time to time, to be agreed upon and ordered by them or the greater part of them.

Page 12.

- 20 [Oct. 4, 1636. Selectmen.] At a meeting . . . it was agreed and ordered that from this day there shall no house at all be built in this town near unto any of the streets or lanes therein, but with the advice and consent of the overseers of the town's occa-  
25 sions. . . .

Page 13.

[Nov. 15, 1636. Selectmen.] . . . Also at this meeting Richard Fairbank is chosen for our hog reeve, according to order of Court.



## The Parish and the Town-Meeting

Page 18.

[May 13, 1637. Selectmen.] . . . Item: It is agreed that Richard Fairbank shall be the fold-keeper for the residue of this our half year time.

5 Page 20.

[Oct. 16, 1637. Town meeting.] [Eleven men chosen as selectmen.] Also at this meeting Mr. Ralph Hudson and Edward Bendall are chosen constables of this town for this next year.

10 Page 35.

[Nov. 2, 1638. Selectmen.] . . . Leave is granted to Richard Rawlings, a plasterer, to buy Peter Johnson's, the Dutchman's house, and to become an inhabitant of this town.

15 Page 36.

[Dec. 10, 1638. Selectmen.] It is agreed that Arthur Perry shall have yearly allowed for his drumming to the Company upon all occasions, the sum of £2, to be paid by the town.

20 Page 39.

[March 25, 1639.] . . . Also it is agreed that our brother Robert Walker shall be the cow-keep[er] for this year. . . .

Page 44.

25 [Dec. 16, 1639. Town meeting.] At this meeting the orders of the last General Court were openly read.

Page 55.

[Sept. 28, 1640. Town meeting.] [Deputies, to

## Source Problems in English History

the General Court, Selectmen and Surveyors of the Highways were elected] . . . and for town-crier, William Courser.

Page 56.

- 5 [Oct. 26, 1640. Selectmen.] There is at this meeting a bridge appointed to be made at Muddy River; Mr. Coleburne, our brother Elliott, and our brother Peter Oliver are appointed to see the same done. . . . Evan Thomas is to be taken into con-  
10 sideration for becoming a townsman with us.

Page 58.

[Jan. 25, 1641. Selectmen.] . . . Evan Thomas is accepted for a townsman at this meeting.

Page 62.

- 15 [July 26, 1641. Selectmen.] . . . Our brother John Oliver is chosen treasurer for the town, and to keep the town's book. [Recorder.]

Page 65.

- [Jan. 10, 1642. Town meeting.] At a general  
20 town meeting upon warning from house to house.

- It's ordered that Deer-Island shall be improved for the maintenance of a free school for the town; and such other occasions as the Townsmen [Selectmen] for the time being shall think meet, the said  
25 school being sufficiently provided for.

It's ordered that there shall be no more lands granted unto any inhabitants that shall hereafter be admitted into the town, unless it be at a general town meeting.

## The Parish and the Town-Meeting

It's ordered that the 9 men [Selectmen] shall, according to the present need of the town, appoint the sum and the particular assessments of a town rate.

Page 71.

5 [Dec. 26, 1642. Selectmen.] It's ordered that parents shall give in a note of the names of their children, and the time of their birth, unto the clerk of the writs (both of such as have been born in this town, and shall be born), within one week  
10 after their birth, under the penalty of 6 pence for every defect, and he that hath the care of the burying-place, shall give notice unto the said clerk, of the names of such as are buried, and that the constable shall signify this order unto every family in  
15 the town.

Page 80.

[July 29, 1644. Selectmen.] . . . Zache Bozworth is appointed poundkeeper. . . . Charity White is allowed 26s. for thirteen weeks' keeping of John Berry,  
20 to be paid by the constables.

Page 82.

[Dec. 2, 1644. Selectmen.] It's ordered that the constables shall pay unto Deacon Eliott for the use of Mr. Woodbridge eight pounds due to him for  
25 keeping the school the last year.

Page 83.

[Jan. 27, 1645. Town meeting.] Valentine Hill, deacon, together with one of the present constables, are appointed auditors of Anthony Stodder, late

## Source Problems in English History

constable, his accounts, and to make report thereof unto the Selectmen at their next meeting.

Page 85.

[Sept. 29, 1645. Selectmen.] . . . Whereas, the several grants of house lots, and other lands recorded in this town-book, are entered only as granted to the parties themselves, without mention of their heirs, it hath been thought fit to be hereby declared and ordered that all such grants were, and shall be intended to be estates in fee simple, with all due and usual privileges and appurtenances, and are so to be construed, and taken to all intents, except in such cases wherein any particular estate for a term of years is specially expressed.

15 Page 86.

[Feb. 23, 1646. Selectmen.] . . . Thos. Scotto is appointed to see that the graves be digged five foot deep, and to see the gates be fast and the fence up, and to have some allowance.

20 Page 87.

[March 30, 1646. Selectmen.] John Berry is put an apprentice to Edward Keyly for seven years.

Page 88.

[May 18, 1646. Town meeting.] . . . It is granted that all the inhabitants shall have equal right of commonage in the town; those who are admitted by the townsmen, to be inhabitants.

Page 90.

[March 18, 1647. Town meeting.] [Besides elect-

## The Parish and the Town-Meeting

ing the usual officers—Selectmen, deputies, constables, etc.] . . . For sealers of leather: Bro[ther] Copp, Evan Thomas, Will Courser, John Stevenson.

Page 91.

- 5 [July 26, 1647. Selectmen.] Martin Stebbin is fined 20s. for brewing beer to sell without order. Martin Stebbin is allowed to brew beer at a penny a quart, and two quarts ["small beer"] a penny and not to exceed upon penalty of 20*l.* fine.

10 Page 92.

[March 13, 1648. Town meeting.] It is ordered that no constables shall be discharged of their place till they have given up their accounts of the rates that is committed to them.

15 Page 94.

[March 12, 1649. Town meeting.] The usual officers elected.] . . . For clerks of the market, Jerimy Howchin, James Penn. . . . Mr. Thos. Clarke is fined 20s. for refusing to serve his constable's place.

20 Page 95.

[April 9, 1649. Selectmen.] Mr. Bowin and Peter Oliver is chosen for perambulation at Muddy River.

Page 96.

- [June 26, 1649. Selectmen.] Rich. Taylor is to  
25 ring the bell at 9 of the clock at night and half an hour after four in the morning, and is to have for his recompense 4*l.* a year. . . .

Page 100.

[March 25, 1650. Selectmen.] . . . Mr. Jerimy

## Source Problems in English History

Howchin is chosen sealer of the weights and measures this year till another be chosen.

Page 106.

[Aug. 11, 1651. Town meeting.] . . . Also it was  
5 ordered that the Selectmen shall take care from time to time for the prevention of danger of fire by defective chimneys, and upon complaints to view them, and to order their repair upon penalty if not repaired.

10 Page 108.

[Feb. 23, 1652. Selectmen.] . . . John Vvall hath liberty to keep a house of common entertainment if the County Court consent, provided he keep it near the new meeting-house or northward of it.

15 Pages 113, 114.

[March 14, 1653. Town meeting.] [Usual officers elected, also.] . . . For packer of flesh and fish: Sarjt. John Barrell. . . . It is ordered that there shall be a ladder or ladders to every house within this town  
20 that shall reach to the ridge of the house [also a pole, 12 feet long, with a "swob" on the end of it which every householder shall provide for his house by the last day of the third month next, on penalty of six shillings, eight pence.] . . . It is ordered that the  
25 Selectmen shall forthwith provide six good and long ladders for the town's use, which shall hang at the outside of the meeting-house, there to be ready in case of fire, these ladders to be branded with the town mark.

## The Parish and the Town-Meeting

Pages 121, 122.

[Jan. 29, 1655. Selectmen.] The treasurer is to pay to [these] several persons [their names following] the sum of seventeen pounds, fifteen shillings, for  
5 the billeting of 32 soldiers, being impressed for the expedition against Ninicraft.

Pages 122, 123.

[March 12, 1655. Town meeting.] [The usual officers elected] . . . for corders of wood: Thos.  
10 Leader [and three others].

Page 127.

[Nov. 27, 1655. Selectmen.] Robert Wyatt and Wm. Lane are appointed to sweep chimneys and to cry about streets that they may be known.

15 Page 129.

[1656. Town meeting.] . . . [Chosen as] gaugers of cask, Wm. Dinsdale, John Cunny.

Page 129.

[March 14, 1656. Town meeting.] It is ordered  
20 that the Selectmen shall have liberty to lay out a piece of ground out of the town's land, which they give to the building of a house for instruction of the youth of the town.

Page 131.

25 [July 28, 1656. Selectmen.] . . . If any young person or others be found without either meeting-house, idling or playing during the time of public exercise on the Lord's day, it is ordered that the constables or others appointed for that

## Source Problems in English History

end shall take hold of them and bring them before authority.

Pages 136, 137.

[April 27, 1657. Selectmen.] Richard Way admitted into the Town provided that Aaron Way do become bound in the sum of twenty pounds sterling to free the town from any charge that may accrue to the town by the said Richard or his family.

I, Aaron Way, do hereby engage myself, my heirs, 10 executors, etc., unto the Selectmen of the town of Boston and their successors in the sum of twenty pounds sterling in behalf of my brother, Richard Way, and his family, that they shall not be chargeable to the town, and hereunto set my hand.

15 Aaron X Way.  
his mark.

Page 140.

[Nov. 30, 1657. Selectmen.] It is ordered that Philip Curtis be paid twenty shillings for killing a 20 wolf at Muddy River the last winter.<sup>1</sup>

Page 142.

[Jan. 25, 1658. Selectmen.] It is ordered that measures of brass be provided as standards for the town and reserved for that use.

25 Page 148.

[Nov. 29, 1658. Selectmen.] Whereas fifteen

<sup>1</sup> Regular bounties were provided by law at Plymouth for killing wild beasts, as was done in earlier times in England for the "destruction of noisome fowl or vermin."



## The Parish and the Town-Meeting

pounds were given by Mr. Paddy as a legacy to the poor of the town, it is ordered that the town treasurer dispose of the same according to order.

Page 151.

- 5 [March 28, 1659. Selectmen.] John Dawes is ordered to oversee the youth at the new meeting-house, that they behave themselves reverently in the time of divine worship, and to act according to his instructions herein.

- 10 7. *Records of Boston Selectmen.*

Page 5.

- [May 22, 1701.] Ordered that thirty hundred-weight of bullets and five thousand of flints be forthwith provided for a town stock, and Mr. Gyles Dyer,  
15 Mr. Richard Draper, and Mr. Robert Gibbs are appointed to take care to procure the same.

Page 7.

- [July 28th.] Ordered that a motion be made to the Quarter Sessions to remove the incroachment formerly made by Col. Page on the highway nigh the  
20 town house.

Page 18.

- [March 16, 1702.] At a meeting of the justices of the peace and Selectmen within the town of  
25 Boston . . . it was then by the said justices and Selectmen agreed that the bake-house belonging to the Rev. Mr. James Allen . . . and the granary belonging to Mr. Arthur Mason . . . be the houses at present improved for the lodging of gunpowder

## Source Problems in English History

in, until other and better provision be made for the same.

Page 23.

[June 9, 1702.] At a meeting of the Selectmen with  
5 the overseers of the poor and the town treasurer:  
it is mutually agreed unto, that the treasurer do  
pay out the ninety pounds in money now in hand,  
for the use of the poor and as the overseers of the  
poor shall order. The overseers of the poor having  
10 agreed and resolved not to send the poor to the  
treasurer as formerly.

Page 193.

[Sept. 15, 1713. Selectmen.] Ordered that a cage  
be made and placed at the upper end of Queen  
15 Street, and the whipping-post and stock be placed  
there also.

8. Winthrop's *Journal*.

I, page 116.

[Dec., 1633.] After much deliberation and seri-  
20 ous advice, the Lord directed the teacher, Mr. Cot-  
ton, to make it clear by the scripture that the  
minister's maintenance, as well as all other charges  
of the church, should be defrayed out of a stock, or  
treasury, which was to be raised out of the weekly  
25 contribution; which accordingly was agreed upon.

. . . . .

Page 144.

[1634.] One Abigail Gifford, widow, being kept at

## The Parish and the Town-Meeting

the charge of the parish of Wilsden in Middlesex, near London, was sent by Mr. Ball's ship into this country, and being found to be sometimes distracted, and a very burdensome woman, the governor and  
5 assistants returned her back, by warrant 18, to the same parish, in the ship *Rebecca*.

### 9. *The Records of the Town of Cambridge.*

Page 354.

[Jan. 19, 1663.] The committee for ordering the  
10 seating of people in the meeting-house being met at the ordinary [inn]:

Appointed: Bro. Rich. Jackson's wife to sit there where sister Kempster was wont to sit. Mrs. Upham, with her mother. Ester Sparhauke, in the  
15 place where Mrs. Upham is removed from. . . . John Stedman, on the fore gallery on the south side. . . . Mary Lemmon, where old sister Jackson was wont to sit . . . [etc.].

Page 155.

20 [Feb. 13, 1665. Selectmen.] . . . Thomas Gleison being sent for to appear before the Selectmen was warned to provide himself, the townsmen not seeing  
'meet to allow of him as an inhabitant in this town. [Note by clerk, in margin: "He had been in the  
25 town about a week."]

Page 175.

[Feb. 8, 1669. Selectmen.] . . . for catechising the youth of this town: Elder Champney, Mr. Oakes are appointed for those families on the south side

## Source Problems in English History

the bridge. [Fifteen others appointed for various sections of the town.]

Page 226.

[Feb. 14, 1676. Selectmen.] William Manning  
s [and three others] are appointed by the Selectmen  
to have inspection into families that there be no  
bye-drinking nor any misdemeanor whereby sin is  
committed and persons [are] from their houses  
unseasonably.

## PROBLEM VII

VII.—Beginning of Peace Negotiations with  
America



# Beginning of Peace Negotiations with America

## I. THE HISTORICAL SETTING OF THE PROBLEM

THE Seven Years' War was a long reach forward in the history of English expansion. If English politicians and diplomats failed to hold for England all the winnings of her warriors, the Peace of Paris, nevertheless, gave the British Empire a secure place in the sun. She received nearly all the French possessions in America except Louisiana (including the city of New Orleans and the isle of Orleans upon which it stands), she gained Florida from Spain, she got some of the French islands in the West Indies, and she established her position more firmly in India. It was Turgot, the French statesman, who then prophesied that the French loss of Canada would eventually cost England the loss of her American colonies. Whatever partial truth there was in this, from the Peace of Paris on, tendencies were at work which were to drive the thirteen colonies out of the English fold. In 1775 the disaffection came to a head and in the next year the Declaration of Independence committed the colonies to the policy of complete separation. George III., who with the help of Lord North was attempting in England to substitute for the system of cabinet and party government his personal rule through ministers, strove no

## Source Problems in English History

less eagerly in the New World to coerce the colonies into submission to royal regulation and taxation. The narrow mind of the sovereign, intent upon exercising those prerogatives of the crown which the first two Georges had lost, was by instinct impatient of colonial aspiration and intolerant of colonial insolence. It was George III. who forced the opposition in Parliament to speak for the Americans. The Whigs would have been utterly undiscerning had they not felt their community of interest with the colonists. Not even the outbreak and progress of the war stopped their voices. But in their sympathy for the Americans they were by no means united. The followers of Chatham, among whom, after their leader's death, Shelburne was most prominently concerned in American policies, never grew weary of asserting that America had been goaded into the war. She could, they said, be won back by proper concessions. Another faction, of which Rockingham was the leader and Charles Fox the daring spokesman, declared that America deserved and would ultimately win independence. Meantime, in 1778, France, eager to avenge the Seven Years' War and willing to see England lose her best possession, had allied herself with the United States, each nation promising not to make peace without the consent of the other, and not before the acknowledgment of American independence. Spain soon followed France into the war, though not as an ally of the United States, and Holland was drawn in through English resentment of her policy of supplying naval and military stores to the enemies of England.

The news of Cornwallis's surrender at Yorktown put an end to George III.'s plans for subduing the revolted colonies, and with the failure of those plans all his efforts to turn back the clock in England were without effect.



## Beginning of Peace Negotiations

The ejaculation attributed to Lord North, "O God! it's all over!" was no over-statement. The factions of the Whig party came together, and the Commons by a majority of nineteen resolved to cease offensive warfare in America and to direct their energies against France, Spain, and Holland. It was high time. Early in 1782 England lost the island of Minorca and several of the West Indies. From the English point of view the next move was to induce America to forswear her French ally and accept a separate peace. Attempts in this direction had indeed already been made. Lord North had made use of David Hartley, an intimate friend of Franklin; and one Digges, who was a great deal of a rascal, but who claimed to represent Lord North, had interviewed Franklin in Paris and Adams in Holland. Neither of these attempts, nor a like one to seduce France from the support of America, availed to disturb the close relations existing between Franklin and the French Minister of Foreign Affairs, Vergennes. Had he wished to do so Franklin would not have dared to go back on the instructions to the American Commissioners for Peace, instructions which forbade negotiation without the knowledge of the French Ministers. He was glad to live up to them and kept Vergennes informed of every move. The only effect of such efforts had been to rouse the resentment of Franklin, who was, in consequence, in no mood at all to listen to further negotiations of the kind. This the student should bear in mind.

On March 20, 1782, Lord North resigned, and the Rockingham Cabinet was formed from the two wings of the Whig party. The union was a marriage of convenience and was destined to prove a *mésalliance*. Charles Fox, Secretary of State for Foreign Affairs, was in favor of immediate and unconditional recognition of American

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independence. That such a recognition would throw the negotiations into his hands, since the United States would cease to be a colonial possession and would at once become a foreign nation, cannot be said to have been the determining motive of a man who had on many occasions wished success to the revolting colonies. Lord Shelburne, Secretary for Home Affairs, Ireland, and the Colonies, a personal and political opponent of Fox, had leaned, as a follower of Chatham, toward some scheme of federation between Great Britain and America, but was now coming around, reluctantly enough, to the possibility of separation. He thought independence might have to be granted, but only in return for important concessions. Meantime, so long as independence had not been given, he had, as Secretary of State for the Colonies, charge of the negotiations for peace. Seldom had English diplomacy been so confused with party politics.

In the summer of 1781, even before Yorktown, John Adams, John Jay, Benjamin Franklin, Henry Laurens, and Thomas Jefferson<sup>1</sup> had been commissioned to make peace<sup>2</sup> whenever the time should be ripe. For such a

<sup>1</sup> Adams was in Holland trying to negotiate a treaty and to obtain a loan; Jay was in Spain on a similar mission; Jefferson did not get away; Laurens was a prisoner in England at the time the commission was given, but, though released, was unable to take much part in the negotiations. Franklin knew that he could count only on Adams and Jay, but did not know when they would be able to get to Paris.

<sup>2</sup> Owing to the influence of the French representative in America, they had been instructed "to make the most candid and confidential communications upon all subjects to the ministers of our generous ally, the King of France; to undertake nothing in the negotiations for peace or truce without their knowledge and concurrence; and ultimately to govern yourselves by their advice and opinion." Such instructions were no hardship to Franklin, but his trust in the French Ministers was not fully shared by either Adams or Jay.

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task Franklin was in a peculiarly good position. He represented America at the French Court, and was in the good books of both the Court and the people. He had, furthermore, the confidence of Vergennes. Before Franklin knew that Shelburne had joined the Rockingham Ministry, he had, on the strength of a former friendship and as the upshot of a call from Lord Cholmondeley, written Shelburne a letter in which he expressed the hope of a "general peace." It was natural that Shelburne, when he came into power, should return such a lead. With the knowledge of Rockingham and other members of the Cabinet he sent Richard Oswald, an elderly Scotch merchant who had been introduced to him by Adam Smith, and who had large interests in America, to treat with the American representative in Paris. Oswald, who was an honest if somewhat simple-minded gentleman, was cordially received by Franklin and was presented by him to Vergennes.

The rest of the story the student will piece together from the source extracts which follow. It is a wise statement of Gardiner that no part of historical method is so fruitful as tracing the order of events in time. In no field of history is this so true as in diplomacy. The student can thread his way through the negotiations down to that point in June when the Cabinet through Shelburne empowered Oswald to treat with the American commissioners. Just at that time, when Fox announced his intention of resigning, Lord Rockingham died. Shelburne was asked to head the new Cabinet, and Fox, of course, refused to enter it. Thomas Grenville, who had been Fox's appointee at Paris, was replaced by Lord Fitzherbert, and treaties of peace were concluded between England and the four nations with which she had been at war.

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## II. INTRODUCTION TO THE SOURCES

1. *The Writings of Benjamin Franklin*, collected and edited by A. H. Smyth [New York, 1906], Vol. VIII. [Two important letters written by Oswald and Shelburne have been taken from Jared Sparks's edition of Franklin's works (Boston, 1840), Vol. IX.]

2. *The Life of William, Earl of Shelburne, afterward first Marquess of Lansdowne. With Extracts from his Papers and Correspondence* [London, 1876], Vol. III.

3. *The Life and Times of Charles James Fox*, by the Right Honorable Lord John Russell, M.P. [London, 1853], Vol. I.

4. *The Autobiography and Political Correspondence of . . . the Duke of Grafton*, edited by Sir W. R. Anson [London, 1898].

The works above mentioned include several kinds of sources which may be classified under four headings.

### a. Franklin's *Journal*.

Franklin wrote this as a report to Robert Livingston, Secretary of Foreign Affairs of the Congress of the United States, and he undoubtedly intended it for future publication. He was conscious of the posterity to whom he was speaking, and knew that every part of his narrative could be tested by other accounts. As a matter of fact, Oswald's diary of events, which has been preserved in the Lansdowne MSS., agrees with Franklin's *Journal* in almost every detail.

### b. Letters from participants in the events.

These are to be found in the three works mentioned above under 1, 2, and 3. They tell the story at the time from the pens of men who took part, responsible and careful men who realized the meaning of words. Better evi-

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dence could hardly be asked for. These letters are from Charles James Fox, Secretary of State for Foreign Affairs in the Rockingham Ministry; William, Earl of Shelburne, Secretary of State for Home Affairs, Ireland, and the Colonies in the Rockingham Ministry; Thomas Grenville, English Minister Plenipotentiary to France; Richard Oswald, Shelburne's representative in Paris for negotiation with Franklin, and later English Minister Plenipotentiary to treat with the American Commissioners; Benjamin Franklin, American Commissioner Plenipotentiary to France and Commissioner to treat for peace with England.

### *c. The Autobiography of the Duke of Grafton.*

Grafton was Lord Privy Seal in the Rockingham Cabinet and his Autobiography contains his recollections of what happened in the Cabinet. Because it was put together somewhat later and depends at least in part upon the accuracy of memory of an old man, it cannot be so fully trusted as letters written at the time. But a large part, including what is quoted, was based upon contemporary memoranda.

### *d. Minutes of Cabinet meetings.*

No formal minutes of Cabinet meetings were ever kept. Fox's notes of such sessions were purely for his own memory, and were probably put together after the sessions.

## III. QUESTIONS AND SUGGESTIONS FOR STUDY

1. Write a consecutive narrative of the events concerning the negotiations from March 22 to July 1, 1782.
2. Upon what basis did Oswald indicate that Shelburne was willing to begin negotiations?
3. How much enlightenment did Franklin get from his first interview with Oswald?

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4. Where does Oswald first show himself more honest than diplomatic?
5. Why should Franklin hesitate to give the Notes on Canada to Oswald? Is the reason he offers for regretting his step the only reason he may have had?
6. On what condition did Franklin give the Notes?
7. Who saw the Notes in England? Were they of such a nature as to have deserved consideration by the whole Cabinet?
8. Why did Shelburne not show the Notes to Rockingham? to Fox?
9. Did Fox and Grenville read too much official significance into the Notes?
10. What error in diplomatic courtesy did Grenville commit upon arriving in Paris?
11. With whom did the English Cabinet consider that Grenville was sent to confer? To whom did he consider himself sent?
12. How did Grenville's first proposal to Vergennes compare with Oswald's first suggestion to Franklin?
13. What diplomatic stand was Grenville in his first interview trying to force Vergennes into?
14. What progress had been made at the end of that interview?
15. Why was Oswald so uncommunicative on his second visit to Paris?
16. What part did the Notes about Canada play in Oswald's second visit?
17. In what attitude of mind was Franklin toward suggestions for a separate peace with America? Why?
18. For what was Grenville in his first interview with Franklin trying to pave the way?
19. Was Franklin sincere in all his answers?
20. Did Grenville gain anything more from Franklin in this interview than Franklin tells us of in his *Journal*?
21. What misstatement did Grenville make concerning his commission? How was the statement received by Franklin and Vergennes?

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22. Was there any reason for the form of Grenville's commission?
23. Was Franklin satisfied with Grenville's explanation?
24. What was Grenville's motive in acquainting Franklin with one of his instructions? Was his action premature?
25. State the two points of view in the English Cabinet with regard to acknowledging American independence.
26. What was Franklin's and Vergennes's opinion of the English efforts to use the acknowledgment of American independence as part of the bargain?
27. Compare Franklin's account of Grenville's visit on June 1st with Grenville's account.
28. Was Oswald in Paris secretly? Had Fox reason to know of his presence there or of his intention of being there?
29. What was Grenville's explanation of Franklin's failure to discuss the terms of peace with him on June 1st?
30. What explanation can be inferred from Franklin's account of the conversation?
31. Do Oswald's and Franklin's accounts bear out the statement that Franklin was reserving his confidence for Oswald?
32. How do you explain Franklin's refusal to discuss the terms of a treaty as he had promised to do? How did he explain it? How did Grenville?
33. When did Franklin learn that Oswald would be given a separate commission if Franklin so desired?
34. When and how did he act on that knowledge? Why not before? Does this throw any light on Grenville's letter to Fox (June 4th)?
35. At whose instance was Oswald to be given a separate commission?
36. What suggestion did Grenville make to get the negotiation wholly into Fox's hands? Would it have accomplished that result?
37. How would you answer the two questions in Fox's letter to Grenville (June 10th) concerning possible charges against Shelburne?

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38. Did Grenville discover "further proofs of duplicity" upon the part of Shelburne and Oswald?
39. What is the importance of the Enabling Act in reference to Franklin's unwillingness to discuss terms?
40. What estimate did Franklin make of the two men, Grenville and Oswald?
41. What incident between June 3d and 15th might have affected Franklin's feeling toward Grenville?
42. Was Grenville's failure due to Franklin's reticence? Shelburne's duplicity? Oswald's interference? the English Cabinet situation? or his own diplomatic errors?



## IV. The Sources

1. *The Writings of Benjamin Franklin*, collected and edited by A. H. Smyth. Journal of the Negotiation for Peace with Great Britain. From March 21 to July 1, 1782, Vol. VIII, p. 459, *et*  
5 *passim*.

PASSY, 9 May, 1782.

As since the change of ministry in England some serious professions have been made of their disposition to peace, and of their readiness to enter  
10 into a general treaty for that purpose; and as the concerns and claims of five nations are to be discussed in that treaty, which must therefore be interesting to the present age, and to posterity, I am inclined to keep a journal of the proceedings, as far  
15 as they come to my knowledge; and, to make it more complete, I will first endeavor to recollect what has already passed. Great affairs sometimes take their rise from small circumstances. . . .

[Lord Cholmondeley going through Paris was introduced to Franklin and offered to take a letter from him  
20 to Shelburne, whom Franklin had known in England. In that letter Franklin expressed the hope that a "general

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peace" might soon be made. In reply Shelburne sent Richard Oswald to discuss the possibilities of peace.]

I entered into conversation with Mr. Oswald [April 15th]. He was represented in the letter as  
5 fully apprized of Lord Shelburne's mind, and I was desirous of knowing it. All I could learn was, that the new ministry sincerely wished for peace; that they considered the object of the war to France and America as obtained; that, if the independence of  
10 the United States was agreed to, there was no other point in dispute, and therefore nothing to hinder a pacification; that they were ready to treat of *peace*, but intimated, that, if France should insist upon terms too humiliating to England, they could still  
15 continue the war, having yet great strength and many resources left. I let him know, that America would not treat but in concert with France, and that, my colleagues not being here, I could do nothing of importance in the affair; but that, if he pleased, I  
20 would present him to M. de Vergennes, Secretary of State for Foreign Affairs. . . .

[Franklin to Shelburne. April 18, 1782.]

. . . I have conversed a good deal with Mr. Oswald, and am much pleased with him. He appears to me a wise and honest man. I ac-  
25 quainted him, that I was commissioned, with others, to treat of and conclude a peace; that full powers were given us for that purpose, and that the Congress promised in good faith to ratify, confirm, and cause to be faithfully observed, the treaty we should make; but that we would not treat separately from France, and I proposed  
30 introducing him to the Count de Vergennes, to whom I communicated your Lordship's letter containing Mr. Oswald's character, as

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a foundation for the interviews. . . . Being myself but one of the four persons now in Europe commissioned by the Congress to treat of peace, I can make no propositions of much importance without them.

5 [Journal.] In going to him [to give him the letter to carry to Shelburne], I had also in view the entering into a conversation, which might draw out something of the mind of his court on the subject of Canada and Nova Scotia. I had thrown some  
10 loose thoughts on paper, which I intended to serve as memorandums for my discourse, but without a fixed intention of showing them to him.

[Franklin suggested to Oswald that as peace without real reconciliation might bring about future quarrels,  
15 England might well afford to give Canada to the United States by way of reparation for her scalping and burning parties. Oswald appeared "struck" with this discourse and asked to see his notes, which were at length given. The notes threw out the idea that Canada as a neighbor  
20 would be a danger to the United States, that England ought to give it up not only as reparation, but as a means of enabling Congress through the sale of lands to compensate the "royalists." The notes ended, "This is mere conversation matter between Mr. Oswald and Mr.  
25 Franklin, as the former is not empowered to make propositions and the latter cannot make any without the concurrence of his colleagues." Oswald took back also the letter from Franklin to Shelburne indicating his satisfaction with Oswald as a negotiator and saying further that  
30 he desired no other channel of communication between them.]

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By the first opportunity after his departure, I wrote . . . to Mr. Adams. . . . I omitted only the paper of *Notes for Conversation* with Mr. Oswald, but gave the substance, as appears in the letter.

5 The reason of my omitting it was that, on reflection, I was not pleased with my having hinted a reparation to the Tories for their forfeited estates, and I was a little ashamed of my weakness in permitting the paper to go out of my hands.

10 [Shelburne sent Oswald back with a letter to Franklin, April 28th, telling of the decision of the Cabinet to send Oswald to him. Oswald was to settle "the preliminaries of time and place." "It is also determined," he wrote, "that Mr. Fox . . . shall send a proper person [Grenville],  
15 who may confer and settle immediately with Monr. de Vergennes the further measures and proceedings. . . . In the mean time Mr. Oswald is instructed to communicate to you my thoughts upon the principal objects to be settled." Oswald and Franklin went to see Vergennes and  
20 Oswald spoke of Grenville's expected arrival.]

On the whole I was able to draw so little from Mr. Oswald of the sentiments of Lord Shelburne, who had mentioned him as intrusted with the communication of them, that I could not but wonder at his being  
25 sent again to me. . . .

On Tuesday I was at court as usual on that day. M. de Vergennes asked me, if Mr. Oswald had not opened himself farther to me? I acquainted him with the sight I had had of the Minute of Council,  
30 [An extract from which Oswald had shown Franklin.]

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and of the loose expressions contained in it, of what was in contemplation. He seemed to think it odd that he had brought nothing more explicit. I supposed Mr. Grenville might be better furnished.

- 5 [Grenville arrived on May 8th, and, instead of going first to Versailles to Vergennes to whom he was credited, went to see Franklin, and presented to him an introductory letter<sup>1</sup> from Fox.]

10 I imagined the gentleman had been at Versailles, as I supposed Mr. Grenville would first have waited on M. de Vergennes before he called on me. But finding in conversation that he had not, and that he expected me to introduce him, I immediately wrote to the minister. . . .

- 15 [May 9th Franklin took Grenville for the interview with Vergennes, who received the young man cordially.]

What my memory retains of the discourse amounts to little more than this, that, after mutual declarations of the good dispositions of the two courts, Mr.  
20 Grenville having intimated that, in case England gave America independence, France, it was expected, would return the conquests she had made of British islands, receiving back those of Miquelon and St. Pierre. And, the original object of the war being  
25 obtained, it was supposed that France would be

<sup>1</sup> The letter dated May 1st began: "Though Mr. Oswald will, no doubt, have informed you of the nature of Mr. Grenville's commission," etc.

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contented with that. The minister seemed to smile at the proposed exchange, and remarked that the offer of giving independence to America amounted to little: "America," says he, "does not ask it of  
5 you: there is Mr. Franklin; he will answer you as to that point." "To be sure," I said, "we do not consider ourselves as under any necessity of bargaining for a thing that is our own and which we have bought at the expense of much blood and  
10 treasure, and which we are in full possession of."

[Vergennes was quite as positive in refusing to go back to the basis of the treaty of 1763. England did not content herself, he said, in that war with what she hoped at its beginning to attain. He agreed, however, to com-  
15 municate immediately with Spain and Holland.]

Friday morning, the 10th of May, I went to Paris and visited Mr. Oswald. I found him in the same friendly dispositions, and very desirous of good, and seeing an end put to this ruinous war. But I got  
20 no farther light as to the sentiments of Lord Shelburne respecting the terms.

[On May 13th Franklin learned that Oswald was to return to London at once.]

Franklin to Shelburne.

25 PASSY, 13 May, 1782.

. . . I then hoped that gentleman [Oswald] would have remained here some time, but his affairs, it seems, recall him sooner than he imagined. I hope he will return again, as I esteem him more, the more I am acquainted with him, and believe his moderation, pru-

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dent counsels, and sound judgment may contribute much, not only to the speedy conclusion of a peace, but to the framing such a peace as may be firm and long lasting. . . .

[Journal.] I went in the evening to Mr. Oswald's lodgings with my letters, when he informed me, his intention was to return immediately hither from England. . . . We had but little conversation, for Mr. Grenville coming in, I . . . retired, that I might not interrupt their consultations.

10 Since his departure, Mr. Grenville has made me a visit; and entered into a conversation with me, exactly of the same tenor with the letters I formerly received from Mr. Hartley, stating suppositions that France might insist on points totally different  
15 from what had been the object of our alliance, and that in such case he should imagine we were not at all bound to continue the war to obtain such points for her, &c. I thought I could not give him a better answer to this kind of discourse than what  
20 I had given in two letters to Mr. Hartley, and, therefore, calling for those letters, I read them to him. He smiled, and would have turned the conversation; but I gave a little more of my sentiments on the general subject of benefits, obligations, and grati-  
25 tude.

[Franklin then gave a supposititious case carrying very far the duty and obligation of gratitude.]

Mr. Grenville conceived that it was carrying gratitude very far, to apply this doctrine to our situation

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in respect to France, who was really the party served and obliged by our separation from England, as it lessened the power of her rival and relatively increased her own.

5 I told him, I was so strongly impressed with the kind assistance afforded us by France in our distress, and the generous and noble manner in which it was granted, without exacting or stipulating for a single privilege, or particular advantage to herself  
10 in our commerce, or otherwise, that I could never suffer myself to think of such reasonings for lessening the obligation; and I hoped, and, indeed, did not doubt, but my countrymen were all of the same sentiments.

15 Thus he gained nothing of the point he came to push; we parted, however, in good humour. His conversation is always polite, and his manner pleasing. As he expressed a strong desire to discourse with me on the means of a reconciliation with America, I promised to consider the subject, and appointed  
20 Saturday the first day of June for our conversation, when he proposed to call on me. . . .

Our business standing still at present till the return of Mr. Oswald, gives me a void that I may fill  
25 up with two or three circumstances. . . .

[May 26th.] Mr. Grenville visited me. He acquainted me that his courier was returned, and had brought him full powers in form to treat for a peace *with France and her allies*. That he had been to



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Versailles, and had shown his power to M. de Vergennes, and left a copy with him. . . . That Mr. Oswald had arrived in London. . . .

He [Grenville] had requested me at our last interview that, if I saw no impropriety in doing it, I would favor him with a sight of the treaty of alliance between France and America. I acquainted him that it was printed, but that if he could not readily meet with a copy, I would have one written for him.  
10 And as he had not been able to find one, I this day gave it to him. . . .

On Tuesday [May 28th] I dined at Versailles with some friends, so was not at home when the Marquis de Lafayette called to acquaint me, that M. de Vergennes had informed him, that the full power received by Mr. Grenville from London, and communicated by him, related to France only. The  
15 Marquis left for me this information, which I could not understand. On Wednesday [May 29th] I was  
20 at court, and saw the copy of the power. It appeared full with regard to treating with France, but mentioned not a word of her allies. And as M. de Vergennes had explicitly and constantly from the beginning declared to the several messengers, Mr.  
25 Forth, Mr. Oswald, and Mr. Grenville, that France could only treat in concert with her allies, and it had in consequence been declared on the part of the British ministry, that they consented to treat for a general peace, and at Paris, the sending this partial

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power appeared to be insidious, and a mere invention to occasion delay, the late disaster to the French fleet having probably given the court of England fresh courage and other views.

5 M. de Vergennes said he should see Mr. Grenville on Thursday, and would speak his mind to him on the subject very plainly. "They want," said he, "to treat with us for you, but this the King will not agree to. He thinks it not consistent with the  
10 dignity of your state. You will treat for yourselves; and every one of the powers at war with England will make its own treaty. All that is necessary to be observed for our common security is, that the treaties go hand in hand, and are signed all on the  
15 same day."

. . . On Friday, May 31st, Mr. Oswald called on me, being just returned, and brought me . . . letters from David Hartley, and two letters from Lord Shelburne, the first of which had been written before his  
20 arrival. . . .

[Shelburne's first letter was an answer to Franklin's of May 10th, and said that Oswald would stay in Paris until further orders. The second was written after Oswald went back to England, and announced his intended return to Paris.]  
25

I had not then time to converse much with Mr. Oswald, and he promised to come and breakfast with me on Monday [June 3d].

Saturday, June 1st, Mr. Grenville came, according

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to appointment. Our conversation began by my acquainting him, that I had seen the Count de Vergennes, and had perused the copy left with him of the power to treat. That after what he, Mr. Grenville told me of its being to treat with France *and her allies*, I was a little surprised to find in it no mention of the allies, and that it was only to treat with the King of France and his ministers; that at Versailles there was some suspicion of its being intended to occasion delay; the professed desire of speedy peace being perhaps abated in the British court since its late successes; but that I imagined the words relating to the allies might have been accidentally omitted in transcribing, or that, perhaps, he had a special power to treat with us distinct from the other.

He answered that the copy was right, and that he had no such special power in form, but that his instructions were full to that purpose, and that he was sure the ministry had no desire of delay, nor any of excluding us from the treaty, since the greatest part of those instructions related to treating with me. That to convince me of the sincerity of his court respecting us, he would acquaint me with one of his instructions, though perhaps the doing it now was premature, and therefore a little inconsistent with the character of a politician, but he had that confidence in me that he should not hesitate to inform me (though he wished that at present it should

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go no further), *he was instructed to acknowledge the independence of America, previous to the commencement of the treaty.* And he said he could only account for the omission of America in the POWER, by supposing  
5 that it was an old official form copied from that given to Mr. Stanley, when he came over hither before the last peace. Mr. Grenville added that he had immediately after his interview with M. de Vergennes, despatched a courier to London, and  
10 hoped that with his return the difficulty would be removed; that he was perfectly assured their late successes had made no change in the dispositions of his court to peace, and that he had more reason than M. de Vergennes to complain of delay, since  
15 five days were spent before he could obtain a passport for his courier, and then it was not to go and return by way of Calais, but to go by Ostend, which would occasion a delay of five days longer. Mr. Grenville then spoke much of the high opinion the  
20 present ministry had of me, and their great esteem for me. . . .

Mr. Grenville then discoursed of our resolution not to treat without our allies. "This," says he, "can properly only relate to France, with whom you have  
25 a treaty of alliance, but you have none with Spain, you have none with Holland. If Spain and Holland, and even if France should insist on unreasonable terms of advantage to themselves, after you have obtained all you want, and are satisfied, can it be

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right that America should be dragged on in a war for their interests only?" He stated this matter in various lights and pressed it earnestly.

I resolved from various reasons to evade the discussion, and therefore answered that the intended treaty not being yet begun, it appeared unnecessary to enter at present into considerations of that kind. The preliminaries being once settled and the treaty commenced, if any of the other powers should make  
10 extravagant demands on England, and insist on our continuing the war till those were complied with, it would then be time enough for us to consider what our obligations were, and how far they extended. The first thing necessary was for him to  
15 procure the full powers, the next for us to assemble the plenipotentiaries of all the belligerent parties, and then propositions might be mutually made, received, considered, answered, or agreed to. In the mean time I would just mention to him, that, though  
20 we were yet under no obligations to Spain by treaty, we were under obligations of gratitude for the assistance she had afforded us; and as Mr. Adams had some weeks since commenced a treaty in Holland, the terms of which I was not yet acquainted with, I  
25 knew not but that we might have already some alliance and obligations contracted there. And perhaps we ought, however, to have some consideration for Holland on this account, that it was in vengeance for the friendly disposition shown by some of her

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people to make a treaty of commerce with us, that England had declared the war against her.

He said, it would be hard upon England, if, having given reasonable satisfaction to one or two of her  
5 four enemies, she could not have peace with those till she had complied with whatever the others might demand, however unreasonable, for so she might be obliged to pay for every article fourfold. I observed that when she made her propositions, the  
10 more advantageous they were to each, the more it would be the interest of each to prevail with the others to accept those offered to them. We then spoke of the reconciliation; but his full power not being yet come, I chose to defer entering upon that  
15 subject at present. I told him I had thoughts of putting down in writing the particulars that I judged would conduce to that end, and of adding my reasons, [but] that this required a little time, and I had been hindered by accidents; which was  
20 true, for I had begun to write, but had postponed it on account of his defective power to treat. But I promised to finish it as soon as possible. He pressed me earnestly to do it. . . .

On Monday the 3rd, Mr. Oswald came according  
25 to appointment.

[He spoke of his conversations with Shelburne, Fox, and Rockingham, and then, with "utmost frankness," told Franklin that England had to have peace, that "her enemies have the ball at their foot." Franklin was puzzled

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at such "simplicity and honesty" and somewhat suspicious of its meaning. Oswald went on to speak of the esteem in which the ministers held Franklin and finally showed him a memorandum that Shelburne had given him, as follows]:

1. *That I am ready to correspond more particularly with Dr. Franklin if wished.*

2. *That the Enabling Act is passing, with the insertion of Commissioners recommended by Mr. Oswald; and on our part Commissioners will be named, or any character given to Mr. Oswald, which Dr. Franklin and he may judge conducive to a final settlement of things between Great Britain and America; which Dr. Franklin very properly says, requires to be treated in a very different manner from the peace between Great Britain and France, who have been always at enmity with each other. . . .*

[Journal.] We now came to another article of the note, viz. "On our part Commissioners will be named, or any character given to Mr. Oswald which Dr. Franklin and he may judge conducive to a final settlement of things between Great Britain and America."

This he said was left entirely to me, for he had no will in the affair; he did not desire to be farther concerned, than to see it *en train*; he had no personal views either of honor or profit. He had now seen and conversed with Mr. Grenville, thought him a very sensible young gentleman, and very capable

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of the business; he did not therefore see any farther occasion there was for himself; but if I thought otherwise, and conceived he might be farther useful, he was content to give his time and service, in any  
5 character or manner I should think proper. I said his knowledge of America where he had lived, and with every part of which and of its commerce and circumstances he was well acquainted, made me think, that in persuading the ministry to things  
10 reasonable relating to that country, he could speak or write with more weight than Mr. Grenville, and therefore I wished him to continue in the service; and I asked him, whether he would like to be joined in a general commission for treating with all the  
15 powers at war with England, or to have a special commission to himself for treating with America only. He said he did not choose to be concerned in treating with the foreign powers, for he was not sufficiently a master of their affairs, or of the French  
20 language, which probably would be used in treating; if, therefore, he accepted of any commission, it should be that of treating with America. I told him I would write to Lord Shelburne on the subject; but Mr. Grenville having some time since despatched a  
25 courier, partly on account of the commission, who was not yet returned, I thought it well to wait a few days, till we could see what answer he would bring, or what measures were taken. This he approved of.



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The truth is, he appears so good and so reasonable a man, that though I have no objection to Mr. Grenville, I should be loth to lose Mr. Oswald. He seems to have nothing at heart but the good of mankind, and putting a stop to mischief; the other, a young statesman, may be supposed to have naturally a little ambition of recommending himself as an able negotiator. . . .

Saturday, June 8th. I received some newspapers from England, in one of which is the following paragraph.

[From the London *Evening Post* of May 30, 1782.]

*"If reports on the spot speak truth, Mr. Grenville, in his first visit to Dr. Franklin, gained a considerable point of information, as to the powers America had retained for treating SEPARATELY with Great Britain, in case her claims, or demands, were granted."*

[There then follow quotations from the treaty with France as well as arguments that America, if granted independence, might make a separate peace.]

I conjecture that this must be an extract from a letter of Mr. Grenville's; but it carries an appearance as if he and I had agreed in these imaginary discoveries of America's being at liberty to make peace without France, whereas my whole discourse in the strongest terms declared our determinations to the contrary, and the impossibility of our acting not only contrary to the treaty, but the duties of

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gratitude and honor, of which nothing is mentioned. This young negotiator seems to value himself on having obtained from me a copy of the treaty. I gave it him freely, at his request, it being not so  
5 much a secret as he imagined, having been printed, first in all the American papers soon after it was made, then at London in Almon's *Remembrancer*, which I wonder he did not know; and afterward in a collection of the American *Constitutions*, published  
10 by order of Congress. As such imperfect accounts of our conversations find their way into the English papers, I must speak to this gentleman of its impropriety.

[Franklin went to Versailles and laid before Vergennes  
15 all the letters and detailed to him the substance of all the conversations with both Grenville and Oswald, and they agreed on the necessity of acting in concert and preventing any separation of the countries concerned.]

Saturday, the 15th June. . . . Mr. Grenville came,  
20 and acquainted me with the return of his courier, and that he had brought the full powers. . . . That the instrument was in the same terms with the former, except that, after the power to treat with the King of France, or his ministers, there was an addi-  
25 tion of words importing a power to treat with the ministers of any other Prince or *State* whom it might concern. . . . Mr. Grenville then said to me, he hoped all difficulties were now removed, and

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that we might proceed in the good work. I asked him if the Enabling Bill was passed? He said, no. It had passed the Commons, and had been committed in the House of Lords, but was not yet completed. 5 [He assured Franklin that it would be done before Parliament was prorogued.] I then observed to him that, though we Americans considered ourselves as a distinct independent power, or State, yet as the British government had always hitherto affected 10 to consider us only as rebellious subjects, and as the Enabling Act was not yet passed, I did not think it could be fairly supposed, that his court intended by the general words, *any other Prince or State*, to include a people whom they did not allow to be a 15 state; and that therefore I doubted the sufficiency of his power as to treating with America, though it might be good as to Spain and Holland. He replied that he himself had no doubt of the sufficiency of his power, and was willing to act upon it. I then de- 20 sired to have a copy of the power, which he accordingly promised me.

He would have entered into conversation on the topic of reconciliation, but I chose still to wave it, till I should find the negotiation more certainly com- 25 menced; and I showed him the London paper containing the article above transcribed, that he might see how our conversations were misrepresented, and how hazardous it must be for me to make any propositions of the kind at present. He seemed to treat

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the newspaper lightly, as of no consequence; but I observed that, before he had finished the reading of the article, he turned to the beginning of the paper to see the date, which made me suspect that he  
5 doubted whether it might not have taken its rise from some of his letters. . . .

Monday, the 17th. . . . I find myself in some perplexity with regard to these two negotiators. Mr. Oswald appears to have been the choice of Lord  
10 Shelburne, Mr. Grenville that of Mr. Secretary Fox. Lord Shelburne is said to have lately acquired much of the King's confidence. Mr. Fox calls himself the minister of the people, and it is certain his popularity is lately much increased. Lord  
15 Shelburne seems to wish to have the management of the treaty; Mr. Fox seems to think it in his department. I hear that the understanding between these ministers is not quite perfect. Mr. Grenville is clever, and seems to feel reason as readily as Mr.  
20 Oswald, though not so ready to own it. Mr. Oswald appears quite plain and sincere; I sometimes a little doubt Mr. Grenville. Mr. Oswald, an old man, seems now to have no desire but that of being useful in doing good. Mr. Grenville, a young man,  
25 naturally desirous of acquiring reputation, seems to aim at that of being an able negotiator. Oswald does not solicit to have any share in the business but, submitting the matter to Lord Shelburne and me, expresses only his willingness to serve, if we

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think he may be useful, and is equally willing to be excused, if we judge there is no occasion for him. Grenville seems to think the whole negotiation committed to him, and to have no idea of Mr. Oswald's  
5 being concerned in it, and is therefore willing to extend the expressions in his commission, so as to make them comprehend America, and this beyond what I think they will bear. I imagine we might, however, go on very well with either of them, though  
10 I should rather prefer Oswald; but I apprehend difficulties if they are both employed, especially if there is any misunderstanding between their principals. I must, however, write to Lord Shelburne, proposing something in consequence of his offer of vesting Mr.  
15 Oswald with any commission, which that gentleman and I should think proper.

[Franklin was taken sick the next day and on June 23d Jay arrived. On June 27th Franklin gave Oswald the following letter concerning his appointment as a  
20 commissioner]:

PASSY, June 27, 1782.

*To Richard Oswald:*

SIR: The opinion I have of your candor, probity, and good understanding, and good will to both countries, made me hope you  
25 would have been vested with the character of plenipotentiary to treat with those from America.

[He then repeats the objections given above to the power assigned to Grenville.]

I cannot but hope that it is still intended to vest you with the  
30 character above mentioned, respecting the treaty with America, either separately or in conjunction with Mr. Grenville, as to the wisdom of your ministers may seem best. . . .

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Sunday, July 1st, Mr. Grenville called on me.

[Here the journal abruptly ends.]

2. *Life of William, Earl of Shelburne . . . with Extracts from his Papers and Correspondence.* By Lord

5 Edmond Fitzmaurice. Vol. III.

p. 196. [Shelburne to Fox. May 25, 1782.]

I am just now writing to Mr. Oswald, and instruct him of course to remain at Paris as Dr. Franklin desires, till he has orders to return. I likewise desire him to communicate freely to Mr. Grenville  
10 whatever may be of use to him, taking it for granted that you will instruct Mr. Grenville to apprise him of the power sent him, and of such other matters as may be useful in governing his intercourse with  
15 Dr. Franklin and the other American Commissioners, that it may not be supposed in France that there is or can be any difference among us upon the great subjects of peace and war.

p. 197. [Shelburne to Oswald. May 25, 1782.]

20 . . . It is his Majesty's pleasure, that you should furnish Mr. Grenville any lights which may occur to you in the course of your communication with any of these gentlemen [the American Commissioners], which may be useful to him, in his transactions with  
25 the French ministers, or those of any of the other powers of Europe who may be about to enter into the proposed negotiation, and I must recommend to you to omit no opportunity of letting it be understood that there subsists the strictest union in his

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Majesty's Council upon the great subject of peace and war.

p. 216. [Oswald to Shelburne. July 11, 1782.]

I thank your Lordship for the caution with respect to affairs under Mr. Grenville's direction [Shelburne had cautioned him not to give any offence to Grenville]. It would have been quite wrong in me to meddle with it in any shape, and so cautious was I, that I scarce asked him any question as to the progress of his affairs, thinking it sufficient if by an intercourse with Dr. Franklin, I could help to bring on a settlement with the Colonies. . . . Even in this business, I had scarce taken any step since my last coming over in the end of May. It was impossible to do so, as Mr. Franklin seemed to attend to the expectation and issue of Mr. Grenville's powers and instructions; which he said were imperfect at first, and not completed at last to his satisfaction with respect to them. So that the Doctor did not incline to talk of business to me, and I had nothing to write, even if I had known the times when Mr. Grenville's couriers were despatched. The situation was not agreeable, but I could not help it. And I believe the Doctor was not pleased, although he said little to me on the subject.

3. Letters from the *Lansdowne MSS.*, quoted in footnotes to Sparks's edition of Franklin's works from the MS. copies lent to Mr. Sparks by the Marquess of Lansdowne. Vol. VIII.

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p. 323. [Oswald to Shelburne. June 9, 1782.]

I have nothing of business to trouble your Lordship with, only that upon one occasion, since my last arrival, Dr. Franklin said they (the Americans) had been totally left out in Mr. Grenville's powers, as they extended only to treating with the minister of France. I told him the deficiency would, no doubt, be supplied in due time, as might be supposed, since, in the mean while, they had been assured by Mr. Grenville, that his Majesty had agreed to *grant independence in the first instance*. The Doctor said it was true, and he was glad of it, and supposed that was all that could be done, until the act depending in Parliament was passed. He then talked of treaties, and said, he thought the best way to come at a general peace was to treat separately with each party, and under distinct commissions to one and the same, or different persons. . . . Mr. Grenville being very well with the Doctor, he has, no doubt, mentioned the same things to him; yet I thought it my duty to communicate to him the substance of this conversation.

p. 345. [Shelburne to Oswald. June 30, 1782, Whitehall.]

. . . You will observe that we have adopted his [Franklin's] idea of the method to come to a general pacification by treating separately with each party. I cannot but entertain a firm reliance, that the appointment of the particular commissioners will



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be no less satisfactory to him. He has very lately warranted me to depend upon that effect in the instance of your nomination. . . .

4. *Autobiography of the Duke of Grafton*, p. 318.

5 "On this gentleman's [Mr. Oswald's] return [May 14th] it was Mr. Fox's wish to have placed the whole negotiation with any of the powers at war into the hands of Mr. Grenville; but the Cabinet decided that, as the Doctor desired Mr. Oswald's return, to  
10 whom he had spoken with openness and freedom, it would be impolitic not to comply with a request of this nature. Besides, it was not yet fully known in what light our offers to treat might be received by the French ministry. The line of our proposals was  
15 independence for America, and the restitution of matters to the state in which they stood on the Treaty of Paris; and these were to be considered as the basis of the negotiation."

5. *Memorials and Correspondence of Charles James Fox*. Edited by Lord John Russell. Vol. I.  
20 p. 345. [Cabinet Minute.<sup>1</sup> April 23, 1782.]

*Present*—Lord Chancellor, Lord President, Duke of Richmond, Marquis of Rockingham, Duke of Grafton, Lord Ashburton, Lord John Cavendish,  
25 Lord Keppel, General Conway, Mr. Fox, Lord Shelburne.

It is humbly submitted to his Majesty that Mr. Oswald shall return to Paris, with authority to name

<sup>1</sup> These minutes are taken from Fox's papers.

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Paris as the place, and to settle with Dr. Franklin the most convenient time for setting on foot a negotiation for a general peace, and to represent to him that the principal points in contemplation  
5 are—The allowance of independence to America upon Great Britain's being restored to the situation she was placed in by the treaty of 1763, and that Mr. Fox shall submit to the consideration of the King a proper person to make a similar communication to Mons. de Vergennes.  
10

p. 351. [Cabinet Minute. May 18, 1782.]

*Present*—Lord Chancellor, Lord President, Duke of Richmond, Lord Rockingham, Lord Shelburne, Lord John Cavendish, Lord Keppel, Lord Ashburton,  
15 General Conway, Mr. Fox.

It is humbly submitted to your Majesty, that your Majesty will be pleased to direct Mr. Fox to order full powers to be given to Mr. Grenville to treat and conclude at Paris, and also to direct Mr.  
20 Fox to instruct Mr. Grenville to make propositions of peace to the belligerent powers upon the basis of independence to the thirteen colonies in North America, and of the Treaty of Paris; and in case of such proposition not being accepted, to call upon  
25 Monsieur de Vergennes to make some proposition on his part, which Mr. Grenville will, of course, report to Mr. Fox.

p. 357. [Cabinet Minute. May 23, 1782.]

*Present*—Lord Chancellor, Lord Privy Seal, Lord

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Rockingham, Lord Shelburne, Lord John Cavendish, Lord Keppel, Lord Ashburton, General Conway, Mr. Fox.

It is humbly recommended to your Majesty to  
5 direct Mr. Fox to instruct Mr. Grenville to propose the independency of America in the first instance, instead of making it a condition of a general treaty.

p. 359. [Grenville to Fox. Paris, June 4, 1782.]

. . . Recollect always that this letter is written in  
10 that confidence, and I am sure I never can repent of having sent it. You will easily see from the tenor of the correspondence we have hitherto had, that what little use I could be of to you here, appeared to me to be in the communication that I had  
15 with Franklin. I considered the rest of the negotiation as dependent upon that, and the only possible immediate advantages which were to be expected, seemed to me to rest in the jealousy which the French court would entertain of not being thoroughly sup-  
20 ported in everything by America. The degree of confidence which Franklin seemed inclined to place in me, and which he expressed to me, more than once, in the strongest terms, very much favoured this idea, and encouraged me in wishing to learn from  
25 him what might be, in future, ground for a partial connection between England and America; I say in future, because I have never hitherto much believed in any treaty of the year 1782, and my expectation, even from the strongest of Franklin's expressions,

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was not of an immediate turn in our favour, or any positive advantage from the Commissioners in Europe, till the people of America should cry out to them, from seeing that England was meeting their  
5 wishes. It was in this light, too, that I saw room to hope for some good effects from a voluntary offer of unconditional independence to America: a chance which looked the more tempting, as I own I considered the sacrifice as but a small one, and such as,  
10 had I been an American, I had thought myself little obliged to Great Britain in this moment for granting, except from an idea that, if it was an article of treaty, it would have been as much given by France as by England.

15 I repeat this only to remind you that, from these considerations, the whole of my attention has been given to Franklin, and that I should have considered myself as losing my time here, if it had not been directed to that subject. I believe I told you  
20 in my last that I had very sanguine expectations of Franklin's being inclined to speak out when I should see him next; indeed, he expressly told me that he would think over all the points likely to establish a solid reconciliation between England and America,  
25 and that he would write his mind upon them, in order that we might examine them together more in order, confiding, as he said, in me, that I would not state them as propositions from him, but as being my own ideas of what would be useful to both

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countries. (I interrupt myself here, to remind you of the obligation I must put you under not to mention this.) For this very interesting communication, which I had long laboured to get, he fixed the  
5 fourth day, which was last Saturday [June 1st]; but on Friday [May 31st] morning Mr. Oswald came, and having given me your letters, he went immediately to Franklin, to carry some to him. I kept my appointment at Passy the next morning, and in order  
10 to give Franklin the greatest confidence, at the same time, too, not knowing how much Mr. Oswald might have told him, I began with saying that, though under the difficulty which M. de Vergennes and he himself had made to my full power, it was not the  
15 moment as a politician, perhaps, to make further explanations till that difficulty should be relieved; yet to show him the confidence I put in him, I would begin by telling him that I was authorized to offer the independence in the first instance, instead of  
20 making it an article of general treaty. He expressed great satisfaction at this, especially, he said, because, by having done otherwise, we should have seemed to have considered America, as in the same degree of connection with France, which she had been under  
25 with us, whereas America wished to be considered as a power free and clear to all the world; but when I came to lead the discourse to the subject which he had promised four days before, I was a good deal mortified to find him put it off altogether till he

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should be more ready; and, notwithstanding my reminding him of his promise, he only answered that it should be in some days. What passed between Mr. Oswald and me will explain to you the reason  
5 of this disappointment. Mr. Oswald told me that Lord Shelburne had proposed to him, when last in England, to take a commission to treat with the American ministers; that upon his mentioning it to Franklin now, it seemed perfectly agreeable to him, and  
10 even to be what he had very much wished, Mr. Oswald adding that he wished only to assist the business, and had no other view; he mixed with this a few regrets that there should be any difference between the two offices, and when I asked upon what  
15 subject, he said owing to the Rockingham party being too ready to give up everything. You will observe though—for it is on that account that I give you this narrative—that this intended appointment has effectually stopped Franklin's mouth to me, and  
20 that when he is told that Mr. Oswald is to be the commissioner to treat with him, it is but natural that he should reserve his confidence for the quarter so pointed out to him; nor does this secret seem only known to Franklin, as Lafayette said laughingly yesterday,  
25 that he had *just left Lord Shelburne's ambassador at Passy*. Indeed, this is not the first moment of a separate negotiation, for Mr. Oswald, suspecting by something that I dropped that Franklin had talked to me about Canada (though, by the by, he

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never had), told me this circumstance as follows:—  
When he went to England the last time but one, he carried with him a paper intrusted to him by Franklin under condition that it should be shown only to  
5 Lord Shelburne and returned into his own hands at Passy. This paper, under the title of 'Notes of a Conversation,' contained an idea of Canada being spontaneously ceded by England to the thirteen provinces, in order that Congress might sell the un-  
10 appropriated lands and make a fund thereby, in order to compensate the damages done by the English army, and even those, too, sustained by the royalists. This paper, given with many precautions for fear of its being known to the French court, to  
15 whom it was supposed not to be agreeable, Mr. Oswald showed to Lord Shelburne, who, after keeping it a day, as Mr. Oswald supposes, to show to the King, returned it to him, and it was by him brought back to Franklin. I say nothing to the proposition  
20 itself, to the impolicy of bringing a *strange* neighborhood to the Newfoundland fishery, or to the little reason that England would naturally see, in having lost thirteen provinces, to give away a fourteenth; but I mention it to show you an early trace of separate  
25 negotiation which perhaps you did not before know.

Under these circumstances, I felt very much tempted to go over and explain them to you *viva voce*, rather than by letter, and I must say, with the

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farther intention of suggesting to you the only idea that seems likely to answer your purpose, and it is this: the Spanish Ambassador will, in a day or two, have the powers from his court; the Americans are  
5 here, so are the French; why should you not, then, consider this as a Congress in full form, and send here a person of rank, such as Lord Fitzwilliam (if he would come), so as to have the whole negotiation in the hands of one person? You would by that  
10 means recover within your compass the essential part, which is now out of it; nor do I see how Lord Shelburne could object to such an appointment, which would, in every respect, much facilitate the business. . . . I must entreat you very earnestly to  
15 consider this, to see the impossibility of my assisting you under this contrariety; to see how much the business itself will suffer, if carried on with the jealousy of these clashing interests; and to see whether it may not all be prevented by some single  
20 appointment in high rank, as that I mentioned. . . . Once more I tell you, I cannot fight a daily battle with Mr. Oswald and *his* secretary; it would be neither for the advantage of the business, for your interest or your credit or mine, and even if it was,  
25 I could not do it.

Concluding, then, the American business as out of the question, which personally I cannot be sorry for, you surely have but one of two things to do; either to adopt the proposition of a new *dignified*



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Peer's appointment, which, being single, may bring back the business to you by comprehending it all in one; or Lord Shelburne must have his minister here, and Mr. Fox his; by doing which, Mr. Fox will be  
5 pretty near as much out of the secret—at least, of what is most essential—as if he had nobody here, and the only real gainers by it will be the other ministers, who cannot fail to profit of such a jumble. . . .

Adieu. Let Lord Fitzwilliam answer my letter.

10 [THOS. GRENVILLE.]

p. 366. [Fox to Grenville. St. James's, June 10, 1782.]

I received late the night before last your interesting letter of the 4th, and you may easily conceive  
15 am not a little embarrassed by its contents. In the first place, it was not possible to comply with your injunction of perfect secrecy in a case where steps of such importance are necessary to be taken, and therefore I have taken upon me (for which I must  
20 trust to your friendship to excuse me) to show your letter to Lord Rockingham, the Duke of Richmond, and Lord John, who are all as full of indignation at its contents as one might reasonably expect honest men to be. We are now perfectly resolved to come to  
25 an explanation upon the business, if it is possible so to do without betraying any confidence reposed in me by you or in you by others. The two principal points which occur are the paper relative to Canada, of which I had never heard till I received

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your letter, and the intended investment of Mr. Oswald with full powers, which was certainly meant for the purpose of diverting Franklin's confidence from you into another channel. With these two  
5 points we wish to charge Shelburne directly; but pressing as the thing is, and interesting as it is both to our situations and to the affairs of the public, which I fear are irretrievably injured by this intrigue, and which must be ruined if it is suffered to  
10 go on, we are resolved not to stir a step till we hear again from you, and know precisely how far we are at liberty to make use of what you have discovered. If this matter should produce a rupture, and consequently become more or less the subject of public  
15 discussion, I am sensible the Canada paper cannot be mentioned by name; but might it not be said that we had discovered that Shelburne had withheld from our knowledge matters of importance to the negotiation? And, with respect to the other point,  
20 might it not be said, without betraying anybody, that while the King had one avowed and authorized minister at Paris, measures were taken for lessening his credit, and for obstructing his inquiries, by announcing a new intended commission, of which the  
25 Cabinet here had never been apprized? Do, pray, my dear Grenville, consider the incredible importance of this business in every view, and write me word precisely how far you can authorize us to make use of your intelligence. It is more than pos-

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sible that before this reaches you, many other circumstances may have occurred which may afford further proofs of this duplicity of conduct, and if they have, I am sure they will not have escaped  
5 your observation. If this should be the case, you will see the necessity of acquainting me with them as soon as possible. You see what is our object, and you can easily judge what sort of evidence will be most useful to us. When the object is attained,  
10 that is, when the duplicity is proved, to what consequences we ought to drive, whether to an absolute rupture, or merely to the recall of Oswald and the simplification of this negotiation, is a point that may be afterwards considered. I own I incline to the  
15 more decisive measure, and so, I think, do those with whom I must act in concert. I am very happy indeed that you did not come yourself; the mischiefs that would have happened from it to our affairs are incredible, and I must beg of you, nay, entreat  
20 and conjure you, not to think of taking any precipitate step of this nature. As to the idea of replacing you with Lord Fitzwilliam, not only it would be very objectionable on account of the mistaken notion it would convey of things being much riper  
25 than they are; but it would, as I conceive, be no remedy to the evil. Whether the King's minister at Paris be an Ambassador Extraordinary, or a Minister Plenipotentiary, can make no difference as to the question. The clandestine manner of carry-

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ing on a separate negotiation, which we complain of, would be equally practicable and equally blameable if Lord Fitzwilliam was Ambassador, as it is now that Mr. Grenville is Plenipotentiary. I must, therefore, again entreat you, as a matter of personal kindness to me, to remain a little longer at Paris; if you were to leave it, all sorts of suspicion would be raised. It is of infinite consequence that we should have it to say that we have done all in our power to make peace, not only with regard to what may be expected from America, but from Europe. . . . In this instance the mischief done by intercepting, as it were, the very useful information we expected through you from Franklin, is, I fear, in a great degree irremediable; but it is our business, and indeed our duty, to prevent such things for the future. . . .

## PROBLEM VIII

VIII.—The Parliament Act of 1911



# The Parliament Act of 1911

## I. THE HISTORICAL SETTING OF THE PROBLEM

WHEN in 1649 the Commons put an end to the House of Lords they met little opposition. For eleven years the people of England got along without the peers, although not for all that time without a second chamber. When the Lords came back at the Restoration it was, as they realized, to a position of less influence. "The initiative permanently transferred from one House to the other, the eyes of the nation permanently fixed upon the deliberations of the House of Commons instead of those of the Lords, these were the results of the civil war and the movement which led up to it." Charles II. regarded the Upper House as "of little power to do him good or harm." But the wings of the Lords were by no means clipped. The Revolution of 1689 which gave to certain Whig families a long dominance in English politics rendered the influence of the Upper House secure for more than a hundred years. Only once in the eighteenth century was its hand forced. That was in 1711, when a Tory ministry, unable to carry its peace proposals against a Whig majority in the Lords, induced the Queen to call up three eldest sons to the Lords;<sup>1</sup> and to create nine new peer-

<sup>1</sup> *I. e.*, to give immediate titles to three heirs apparent and so gain additional votes without creating additional peerages.

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ages, and so to give the Tories the majority they needed. In 1719 the Whigs, to stop such creations, proposed that the Lords could never be increased by more than six beyond the then membership. The measure was rejected by the Commons. The incident of 1711, coupled with the outcome in 1719, meant that a way had been hit upon to override the veto of the higher chamber; the precedent, although not used again for a long time, was not to be forgotten. When the Lords in the struggle of 1830-32 stood out against the Reform Bill, it was only the threat of the creation of a sufficient number of peers that availed to pass it. The result of that struggle meant more than that a method of curbing the Upper House was hardening into usage. It was a warning to the Lords to go softly all their days. It meant that the Upper House, if it were to retain any influence, must be very chary in rejecting measures of the Commons, must never reject them, indeed, unless it was quite sure of popular support; it meant, furthermore, that the peers would no longer be able to force a Ministry, intrenched behind a Commons majority, to resign. The Lords had forced a Cabinet out once too often.<sup>1</sup>

What the Lords still had was the veto and the final right to decide when its use was demanded. This the Liberals and Radicals knew only too well and wished, no more than the Conservatives, to go through another struggle. A writer in the Whig *Edinburgh Review* for

<sup>1</sup> When in 1839 the Lords passed a motion for an inquiry into the affairs of Ireland, and when in 1850 they passed an adverse vote upon the Don Pacifico incident, they produced no change of Cabinet. The dissolution which followed in time the rejection of Gladstone's three resolutions on the Irish Church was not really an exception, for the dissolution had been determined upon by Disraeli as soon as Gladstone's resolutions passed the Commons.



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1835 proposed that in cases of deadlock there should be a conference of the two Houses. James Mill, writing in the next year in the *London Review*, a short-lived organ of radicalism, projected a plan which was almost exactly that to be followed seventy-five years later. "Let it be enacted," he wrote, "that if a bill which has been passed by the House of Commons and thrown out by the House of Lords is renewed . . . in the next session of Parliament and passed, but again thrown out by the House of Lords, it shall, if passed a third time in the House of Commons, be law without being sent again to the Lords." And A. J. Roebuck, who in his *Pamphlets for the People* was hammering away at the Upper House, gave written notice in the Commons that he would ask for leave to introduce a bill proposing that the Lords should have merely a suspensive veto—*i.e.*, that the Commons might, after a bill had once been rejected by the Lords, enact it into law. The proposition never reached the debating stage.

Quite different from the plans of the Radicals for limiting the veto of the Lords were the suggestions for reforming the Upper House. When the Government in 1856 proposed to add to the judicial talent in the Lords by giving a life-peerage to a well-known judge, it may have had nothing more in mind than it professed to have. The move was opposed on the ground that it was to revive a long-disused precedent, and that it would allow whatever government was in power a chance to swamp the Upper House with new members. In 1869 Lord Russell brought in a measure authorizing the Crown to create life-peerages, not more than twenty-eight of them, selected from the courts, from the fields of literature, science, and art, from the Commons, and from those who had held office under the Crown. He hoped thereby to

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improve the authority of the House and to raise the character of its debates. This was to do just what the Radicals did not wish done. Less authority was their wish for the Lords, not more. And the reform seemed to them exceedingly diluted. "Childish tinkering" was what John Bright called it. As for the Lords themselves—and there were more of them, as it turned out—they feared to tamper with the question, lest they should rouse sleeping dogs.

In 1883 the possibility of something better than reform, of curtailing the veto of the Lords, was raised by John Bright, whose scheme harked back, whether he knew it or not, to the plans of the Radicals in the thirties. In a speech delivered in October of that year, he proposed that the Upper House should be allowed but one veto, and that if a bill were repassed by the Commons after a rejection by the peers, it should become law. The Lords were, however, to be allowed to take up the measure a second time and to offer amendments. But if these amendments were put aside by the Commons the Lords should be bound to accept the bill. In the next year Lord Rosebery moved in the Lords that "a select committee be appointed to consider the best means of promoting the efficiency of this House." "We represent too much one class," he said, quite plainly; "we see one side of the shield too much." "It was too late for the Senate to deliberate when the Gaul was in their midst; it was too late for the House of Commons to discuss abstract questions when Cromwell was at the table. It will be too late to move for any select committee when the voice which calls for radical reform or abolition becomes loud and universal. . . . But what is heard now is not a demand for abolition. A demand for improvement," he declared, "makes itself heard in every public speech . . . it makes itself heard in

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every magazine . . . it makes itself heard in all the newspapers. . . . It can be no secret . . . that the more ardent spirits of the party to which I belong do not wish for the reform of the House of Lords. They wish for its abolition." In his reply the Marquess of Salisbury indicated his belief that Lord Rosebery's dissatisfaction with the House was due to the fact that the majority in the House happened to be conservative, a phenomenon which the Marquess believed to be temporary, at all events, in its present degree. No one who realized the impulse toward democracy which followed the wide extension of the franchise could have believed that the Lords were to be anything more than the bulwark of the Conservative party, its ever-present help in time of trouble. Probably few of their number were so short-sighted as the Marquess, but they were satisfied with a situation which offered to the forces of radicalism a permanent handicap. Perhaps they could hold back the tide. At any rate, they voted down Lord Rosebery's resolution.

In the same year they did, indeed, accept the third Reform Bill, although not without having first threatened to throw it out. The threat was met by Gladstone with another. He sent word to the Queen that he would not, as a result of the Lords' attitude, dissolve Parliament and fight out again the issue of the franchise. If he had to dissolve, it would be upon the question of an "organic change in the House of Lords." "There is, perhaps, the alternative of advising a large creation of peers; but to this there are great objections, even if the Queen were willing." The method of curbing the peers which had been practised in 1711 and 1832 was less feasible when three or four hundred peers would have to be created to outweigh the hostile majority.

In 1888 the question of the Lords received attention in

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both Houses. In the Commons Mr. Labouchere struck at the root of the tree by moving that it was contrary to the true principles of representative government that any person should be a member of the legislature by right of birth. Mr. Curzon proposed to strengthen the Upper House, to place in it leaders of dissenting churches, important colonials, and men distinguished in the civil, military, and naval services. Mr. John Morley regarded the Lords as a rickety parapet on the edge of a precipice which was more dangerous than no parapet at all. Mr. Labouchere's motion was easily defeated, but the fact that it received the support of the bulk of the Liberal party in the Commons was significant. Lord Rosebery's motion in the Lords for a select committee to inquire into the Constitution of the Upper House, though less radical than Mr. Labouchere's motion, showed the drift of Liberal thinking, as well as Lord Rosebery's perseverance. The House, he urged, was becoming so large that the constitutional method of overcoming its resistance, the creation of peers, was less possible. The Commons rested on six million electors, the Lords on an hereditary principle, which had become dominant only since the sixteenth century. The Lords had been since 1832 the bulwark of one party. "This House which strains at a Liberal gnat will swallow a Conservative camel." Catholic Emancipation, the repeal of the Corn Laws, and the Franchise Bill of 1866 had been accepted by the Lords only because they came from the Conservative party. In 1884 Lord Rosebery had offered no constructive scheme. In 1888 he had a fairly definite plan. Let the Upper House be a representative body; let it be elected by the whole body of the Lords; by other groups as well, by the county boards, or by the larger municipalities, or by the House of Commons; let it have among its membership agents

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of the colonies. As for cases of disagreement between the Houses, let there be a conference and a decision by joint vote.<sup>1</sup> This was carrying matters too far for the Lords, who rejected the motion by 97 votes to 50. When he refused to follow Lord Rosebery, the Marquess of Salisbury had indicated that he was willing to support the principle of life-peerages. He now introduced a measure for giving such peerages to men of eminence. Not more than five were to be granted in a single year, nor were there to be more than fifty at a time. Along with this measure, which would have been deemed hopelessly radical in 1869, the Prime Minister brought in a bill to enable the sovereign to deprive any peer of his right to receive the writ of summons, a measure which became known as the Black Sheep Bill. Both proposals were withdrawn by the Marquess when he found that the leader of the Opposition, Mr. Gladstone, would fight any such partial reforms.<sup>2</sup>

Mr. Gladstone had long been brooding over the powers of the higher chamber. The defeat of the second Home Rule Bill by the Lords in 1893 hardened his heart against them. Upon the issue of the Upper House he was ready to go to the country, but when some of his Cabinet held back, he let the scheme go by the board. His hesitation was probably wiser than daring would have been.

Why had the Liberal party been so slow to take up and push a cause that deeply concerned it? The student who has followed the course of events can readily give the answer. It had been the peculiar combination of elements

<sup>1</sup> In the same year Lord Dunraven introduced a plan of somewhat similar character.

<sup>2</sup> In the next year Lord Carnarvon tried unsuccessfully to revive the Black Sheep Bill.

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in the party which numbed the will. Eager radicals who wished to use the spur, and slow, steady-going Whigs who believed in safety first, were ill-fitted for riding together, not only because they liked different paces, but because, however little they recognized it, they really wished to go in opposite directions. Radicals hoped to curtail the Upper House, or perhaps to abolish it. They would have welcomed the Gilbertian fancy of Lords transformed into fairies. Whigs, on the other hand—and Whigs up to nearly the end of the century, and in some respects indeed up to 1906, were the bone and sinew of the Liberal party—wished to make over the House of Lords. Few of them, indeed, differed in this respect much from the old-line Tories. They were not alert to realize that a made-over House was really a more powerful one. It was this real division in Liberal councils that so long retarded a definite policy.

The years that followed 1893 were for the Liberal party lean ones, and schemes for curtailing the Lords were allowed to lapse. Not until the great Liberal victory of 1906 did the question again take the stage. By this time economic urgency was behind political aspiration. Social-democratic reform on a large scale had become more than the hope of Fabian idealists or statistical slum-workers. It was the demand of a great working class, underpaid, ill provided, and underfed. That class now had votes and was going to see to it that their rulers were not held back by a political wire fence from the rich fields of taxation possibilities which the great holdings of the landed and mercantile classes afforded. How they saw to it, how the Liberal party was at length forced to take up the question of the Lords, is the theme of the great play that begins its rapid action in 1906 and closes after a stormy fifth act with a clean conclusion in 1911. The

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party was pledged, when it came into power, to deal with education. The Education Bill of 1906, which was designed to render state-supported education less sectarian, had all the weight of non-conformist opinion behind it and all the massed force of the Church against it. It was passed by an enormous majority in the Commons, where non-conformist sentiment was probably stronger than it had been since the Long Parliament, but was thrown out by the peers. The Plural Voting Bill, which was to limit a man with several residences to one place of voting at a given time, met a similar end. Then it was that the government brought in and passed through the Commons resolutions, "merely anticipatory," that the power of the Upper House to alter or reject bills must be restricted by law, so as to make sure that "within the limits of a single Parliament the final decision of the Commons should prevail." This was in 1907. In the next year the bill for Old Age Pensions was accepted by the peers because the Conservative party did not oppose the plan. The Lords were, said Mr. Lloyd George, the "poodles" of Mr. Balfour, the leader of the Conservatives. But the Licensing Bill, a mild enough temperance measure which was to reduce the number of public houses by one-third and bring about that consummation within fourteen years, went the way of the Education Bill and the Plural Voting Bill.

The Liberal party now found itself estopped in every attack upon privilege. Faced with aggressive Liberal measures, the Lords had resumed all their old powers. They had taken back all the authority they had before 1830, had taken it back because the New Liberalism was dangerous to institutions and interests of the conservative classes. It was at this point that Mr. Lloyd George brought in the Budget of 1909.

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## II. INTRODUCTION TO THE SOURCES

The Source materials of this problem are of two kinds, neither of which calls for much discussion.

1. Statutes. One statute, the Parliament Act of 1911, is taken from the *Law Reports, the Public General Statutes, 1911* [London, 1911]. The other, the Finance Bill of 1909 (which was finally passed in 1910), is not given in official form because of its length, but its novel features, as summarized by Professor Seligman in an article in the *Survey* for Jan. 15, 1910, are explained in a few brief paragraphs.

2. Speeches. These have been recorded by trained and accurate reporters, or briefed by men expert in getting the gist of a speech from complete reports. The extracts have been collected from three closely related sources.

a. *Hansard* is the official report of speeches in Parliament and is based upon stenographic notes.

b. The *London Times* [weekly ed.] gives excellent summaries of public speeches in and out of Parliament. While the *Times* is a Conservative or Unionist paper, its accounts of speeches are entirely non-partisan and fair.

c. The *Annual Register* gives summaries of speeches which are based upon the official accounts or taken from accounts in the best London dailies.

## III. QUESTIONS AND SUGGESTIONS FOR STUDY

1. What were the immediate expenses in 1909 which made necessary a largely increased revenue?
2. What were the plans of the government for further expenditure in the future?



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3. Which of the Budget proposals of 1909 looked to immediate returns? Which to future revenues?
4. Which features of the Budget would be the most objectionable to the Lords? Why?
5. What alternative did the Unionist (Conservative) party offer to the Budget?
6. Was Mr. Lloyd George framing a financial policy for the future? or was he trying to insert into a finance bill schemes of social legislation? or was he arranging the stage for a struggle with the Lords?
7. What is meant by "tacking"? Had the government been guilty of tacking in the Budget of 1909?
8. What is the constitutional significance of the Resolution of 1672? of the Commons' argument of 1689? of the course of the Paper Bill Repeal of 1860-1861?
9. What did Mr. Balfour mean by the "theory of a 'second chamber' system"? Did the action of the Lords in rejecting the Budget accord with such a theory?
10. What had been the history of attempts on the part of the Lords, by the rejection of measures, to force an appeal to the people? What had been the policy of the Liberal party on this matter? Why did the government then allow a dissolution to follow the rejection of the Budget?
11. How much did Mr. Asquith imply by his warning on Dec. 10th? Had the government any plan in mind by this time?
12. Who writes the King's Speech? What was the significance of the King's words?
13. Why would Lord Rosebery's scheme for the House of Lords be unsatisfactory to the Liberal party? What former scheme did it resemble?
14. How far had Mr. Asquith's Resolutions been forecast at earlier times?
15. What further plans for the House of Lords besides those indicated in the Resolutions did the government have in mind? Have those plans been carried out?
16. What was the significance of Lord Lansdowne's scheme?

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How was it that the leader of the Conservative party in the House of Lords was willing to offer so much?

17. What became of the Budget of 1909? What constitutional theory lay behind the fact that the Lords passed the Budget so quickly when it was presented to them again?
  18. Why was a second election in less than a year's time necessary?
  19. When Mr. Asquith went into the election of December, 1910, what security did he have that the King would exercise his prerogative to pass the Parliament Bill?
  20. Why did the King have no alternative but to accept the advice of his Ministers?
- 
21. What was the change made in the duration of Parliament?
  22. How is the Parliament Act likely to affect the introduction of legislation when the Liberal party is in power?
  23. How will the "speeding up" of legislation, which will naturally occur, affect the influence of the Cabinet?
  24. What will be the effect of the Parliament Act on the improvement and revision of bills?
  25. What had been Edward VII.'s attitude toward the Parliamentary struggle (see *Edward VII.* in Dictionary of National Biography)?

## IV. The Sources

[The Budget of 1909, in general as outlined below, was introduced on April 29th.]

1. Edwin R. Seligman, *The English Budget Proposals*, in the *Survey* for Jan. 15, 1910.

5 England is henceforth to enforce both the differentiation and the graduation of the income tax. In other words, not only is a distinction made between earned and unearned incomes, whereby the unearned incomes are taxed at a higher rate than the  
10 earned incomes; but the beginnings of progressive taxation are introduced by the introduction of the so-called super-tax. That is to say, whenever the total income exceeds £5,000, an additional duty of 6*d.* in the pound (over and above the normal rate  
15 of 1*s.* 2*d.*) is charged for every pound of the amount by which the total income exceeds £3,000. Moreover, on the smaller incomes, in addition to the abatements that are already in force, it is provided that a reduction of £10 in the tax shall be made for each  
20 child. . . .

According to the new scheme the estate duty

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which begins at the rate of one per cent. when the estate amounts to from £100 to £500, now runs up, in a very sharp graduation, until it reaches ten per cent. on estates between £150,000 to £200,000, and  
5 fifteen per cent. on estates over £1,000,000. . . . We also have the legacy and succession duties, which apply to separate shares of the estates. . . . These, which are graduated according to relationship, run up to ten per cent. The result is that  
10 the English inheritance tax under its present form is graduated up to the point of twenty-five per cent. . . .

The Budget provides for what is known as an undeveloped land duty; that is, a tax of one half-  
15 penny on the pound on the site value<sup>1</sup> of land. . . . The tax should not be applied to any land where the site value should not exceed £50 per acre. This at once exempts most of the agricultural land. It is also provided that in the case of agricultural  
20 land where the site value exceeds £50 per acre, the tax shall be chargeable only on the amount by which the site value of the land exceeds its value for agricultural purposes. Other exemptions also are made for parks, gardens, open spaces, and in general for  
25 any land where the commissioners think that it is desirable for social purposes to keep the land free from buildings. In order to make this tax possible,

<sup>1</sup> *I. e.*, the value of the land apart from buildings, machinery, appurtenances, etc.

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provision is made for a survey and valuation of all the lands in the United Kingdom. . . .

The increment value duty is, in many respects, the most interesting part of the entire scheme. It provides that when any land is sold, or leased for a period of more than fourteen years, and the value of the site turns out to be greater than its value at the last transfer or at the beginning of the lease, a tax of twenty per cent. shall be imposed on the increase of land value over and above an increase of ten per cent. in the value. Agricultural land is exempt. . . .

As a supplement to this increment value duty there is . . . a so-called reversion duty at the rate of ten per cent. on the capital value. This reversion duty is payable on the termination of any lease of land, and is assessed on the value of the benefit<sup>1</sup> accruing to the lessor by reason of the termination of the lease. It is not charged on agricultural lands nor on leases less than twenty-one years. . . .

The Budget also provides for a so-called mineral rights duty, which is a tax of five per cent. on the rental value of all rights to work minerals. . . .

2. *Annual Register*, 1909, p. 181. [Mr. Lloyd George at Limehouse, July 30th.]

The city, he said, had demanded further expenditure on the navy; but while the workmen in Derby-

<sup>1</sup> The benefit is the sum by which the total value exceeds the value at the time of the original grant.

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shire, Cleveland, and Dumfries had shown themselves willing to pay, there was a howl from Belgravia. . . . The Budget was raising money to provide against poverty, unemployment, and sickness; 5 for widows and orphans, and for the development of our own land. The land taxes, especially, were being attacked with ferocity. But land near the London docks, formerly rented at £2 or £3 an acre, had sold at £6,000 or £8,000 an acre. A piece of 10 land at Golders Green, near Hampstead, had risen in value from £160 to £2,100 through the making of the tube railway. The Duke of Northumberland had asked £900 an acre for a piece of land wanted for a school and rated at 30s. an acre. . . . As one of 15 the children of the people, he had made up his mind in framing the Budget that no cupboard should be bared, no lot should be harder to bear.

3. *Annual Register*, 1909, p. 209. [Mr. Asquith at Birmingham, Sept. 17th.]

20 As to the Tariff Reform alternative, Mr. Asquith challenged Mr. Balfour to give a clear answer in his coming speech. What would the peers do? Mutilation or rejection would be the most formidable revolution since the days of the Long Parli- 25 liament. Every bill granting taxes stated in its preamble that the taxes were granted by the Commons. Mention of the Lords had been expressly omitted in 1628 on the report of a committee including Coke and Selden, and the principle had been

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confirmed by the celebrated resolutions of 1672 and 1678.<sup>1</sup> It had been affirmed, as he showed by quotations, by the elder Pitt, the Duke of Wellington, Lord Rosebery himself, Lord Salisbury, and Mr. Balfour. . . . In matters of finance the Lords were impotent, the Commons supreme. Amendment and rejection by the Lords were equally out of the question. "That way revolution lies"; it would involve issues far wider and deeper than the right of the Lords to meddle with finance. The Liberal party were not only ready, but anxious and eager to take up the challenge.

4. *Annual Register*, 1909, p. 231.

The Chancellor of the Exchequer [Mr. Lloyd George] described "the issues of the Budget" in the *Nation* [England] of October 30. He rejoiced that one of the greatest struggles in Great Britain for upwards of 250 years should arise over a measure decisively raising some of the most important issues between Liberalism and Toryism—Free Trade or Protection; the taxation of necessities or of superfluities and monopolies; the avoidance, at national cost, of unmerited poverty and distress; the respon-

<sup>1</sup> The Commons Resolution of 1678 was: "That all Aids and Supplies, and Aids to his Majesty in Parliament, are the sole Gift of the Commons, and all Bills for the Granting of any such Aids and Supplies ought to begin with the Commons. And that it is the undoubted and sole right of the Commons to direct, limit, and appoint in such Bill the Ends, Purposes, Considerations, Conditions, Limitations, and Qualifications of such Grants, which ought not to be changed or altered by the House of Lords."

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sibility of the State for the organized development of the neglected wealth of the land. The Budget, he regarded as part of a comprehensive scheme of fiscal and social reform, including unemployment and sickness insurance and rural development. . . . He aimed at raising an increasing revenue to be earmarked for the Government schemes of social reform and national development. . . . The Budget was only a beginning of needed land reform.

- 10 [On Nov. 8, 1909, The Finance Bill or Budget, having been passed in the Commons, was introduced in the Lords.]

5. *Annual Register*, 1909, p. 244.

- On November 16th, the Marquess of Lansdowne gave notice that on the second reading of the Finance Bill he would move "That this House is not justified in giving its assent to the Bill, until it has been submitted to the judgment of the country."

pp. 247, 248.

- 20 The Marquess of Lansdowne, moving his resolution, claimed that the House's right to reject a Money Bill was expressly recorded in the Commons' argument of 1689;<sup>1</sup> but it required reassertion, because the Commons' privileges were now interpreted strictly, and "tacking" had increased, culminating

- <sup>1</sup> Here Lord Lansdowne quoted: "And the Lords are not to alter such gift, grant, limitation, appointment, or modification by the Commons in any part or circumstance, or otherwise interpose in such Bill than to pass or reject the same for the whole, without any alteration or amendment."



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in the Finance Bill of 1894.<sup>1</sup> Thus the Lords were thrown back on rejection, a right asserted—as he showed by quotations—by Earl Spencer and the Marquess of Ripon. The Scottish Valuation Bill and the  
5 Licensing Bill had been rejected, and might be rejected when grafted on a Finance Bill. Why should not a Home Rule Bill be similarly grafted? The question was not whether they could, but whether they ought to reject the Bill. This was admittedly  
10 not an ordinary budget, and so it ought to be referred to the electors.

6. *Hansard*, 1909, Lords, IV, 752-3. [Lord Loreburn (Lord Chancellor), Nov. 22, 1909.]

In the year 1860, when this House threw out the  
15 Bill for the repeal of the Paper Duty, the House of Commons passed a Resolution asserting that they had themselves the power of keeping their own rights inviolate, and the next year they put all the money provisions . . . into one Bill. It was passed by your  
20 Lordships. It has been passed ever since by your Lordships. . . . It is very open to question . . . whether any pure money Bill, small or large, had ever been thrown out by this House. . . . But I will assume,

<sup>1</sup> Lord Lansdowne's exact words on this point were: "But another practice has grown up . . . I mean the practice of grouping together under one Bill a large number of measures dealing with different taxes. That is a recent practice and it never assumed its present proportions until the year 1894. . . . And this change was made with the obvious intention of embarrassing your Lordships in  
30 the exercise of your undoubted rights."

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although I do not wholly assent, that it has been done on various occasions in the course of these small and unimportant Bills; but it has never been done—never—in regard to the finance of the year.

5 [On Nov. 30, 1909, the Finance Bill was rejected by the House of Lords by a vote of 350 to 75.]

7. *The Times*, Dec. 10, 1909, p. 790. [Mr. Asquith in the Commons, Dec. 2d.]

When Mr. Asquith rose to move the resolution  
10 of which he had given notice, "That the action of the House of Lords in refusing to pass into law the financial provision made by this House for the service of the year is a breach of the Constitution and a usurpation of the rights of the Commons," he was  
15 again loudly cheered. . . . It was by insistence on the distinction between the genius and spirit of our Constitution and the bare, barren letter of the law that the liberties of England had been made and saved.  
. . . Ever since 1628, when the name of the House of  
20 Lords was omitted from the preamble of a Supply Bill, the Commons had constantly asserted with great emphasis their exclusive right to determine what the taxation of the country should be. . . . It had been put forward as a justification for the Lords'  
25 action that the Bill in question was not really a Finance Bill. This contention Mr. Asquith brushed aside as the absurd contention of a bankrupt controversialist, there not being, he asserted, one single

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clause in the measure not concerned with the primary purpose of raising revenue. The affirmation that the Lords had not rejected the Bill, but merely referred it to the people, he examined critically, 5 saying that if this precedent of a reference to the people were once adopted no Liberal government would be safe. The Lords would have the power to compel the Executive of the day to take one of three courses—to submit a new Budget to the other 10 House, or to send up the old one again without making in it adequate provision for the needs of the state, or to advise the Crown to dissolve Parliament. . . . The real question . . . was whether, when the Liberal party was in power the House of Lords 15 should be omnipotent. "We are living now [said he] under a system of false balances and loaded dice." . . . "We believe that the first principles of representative government are at stake. . . ."

8. *The Times*, Dec. 10, 1909, p. 790. [Mr. Balfour 20 in the Commons, Dec. 2d.]

In his speech the Prime Minister had ignored vital points; for example, that the Commons had admitted in terms that the Lords had a right to reject a Finance Bill, though not to initiate or amend one. 25 He went on to declare—and the declaration was received by the Ministerialists with mocking laughter—that manifestly such action as the Lords had taken must be of rare occurrence. . . . In support of the contention that the Lords could reject a Finance

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Bill, he referred to opinions expressed by Mr. Gladstone, Lord Spencer, Lord Ripon, and the present Lord Chancellor. . . . The central point . . . in the present controversy was this—Had the Lords, in insisting that the constituencies must be consulted on the Finance Bill, exceeded the functions which a Second Chamber ought to have. . . . If the people should want the Budget they would not suffer, for they could return a Liberal Government and the Finance Bill could be reintroduced. The course taken by the Lords accorded with the whole theory of the Second Chamber system. . . .

9. *Annual Register*, 1909, p. 258. [Mr. Lloyd George, Dec. 3d, at the National Liberal Club.]

15 Dismissing the Bill [Finance Bill] after a few sentences, he said that its rejection had initiated one of the greatest and most promising struggles of modern times. The issue would be the supremacy of the House of Lords. Its insolence had grown by immunity. It was purely a branch of the Tory organization. He would not remain a member of a Liberal Cabinet for an hour unless full powers were accorded it enabling it to pass into law a measure securing that the House of Commons could carry bills in a single Parliament either with or without the sanction of the House of Lords.

10. *The Times*, Dec. 17, 1909, pp. 806-7. [Mr. Asquith at Albert Hall, Dec. 10th.]

. . . The House of Lords had not, indeed, raised, but

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has hurried on for prompt decision a larger issue still [he has been speaking of Tariff Reform]. I tell you quite plainly, and I tell my fellow-countrymen outside that neither I nor any other Liberal Minister  
5 supported by a majority of the House of Commons are going to submit again to the rebuffs and the humiliations of the last four years. We shall not assume office, and we shall not hold office, unless we can secure the safeguards which experience shows  
10 to be necessary for the legislative utility and honor of the party of progress.

[In the week of Dec. 5-12 it was officially announced that Parliament would be dissolved Jan. 8, 1910, and that writs would be issued on that day for a new Parliament.]

15 11. *The Times*, Dec. 17, 1909, p. 806. [Mr. Balfour's Election Address, Dec. 10th.]

The claim of the Government, stripped of the bad history and bad law with which it is obscured, is simplicity itself. They hold that the House of  
20 Commons, no matter how elected or when elected, no matter what its relation to public opinion at the moment, is to be the uncontrolled master of the fortunes of every class in the community; and that to the community itself no appeal, even on the ex-  
25 tremest cases, is to be allowed to lie. . . .

The questions raised are three—(1) May there not be occasions on which an appeal to the people on matters of finance is necessary? (2) Is not this

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one of them? And (3) if these questions be answered in the affirmative, does any other machinery exist for securing the appeal except that which has been set in motion by the House of Lords? . . .

5 The truth of the matter is that the present attack on the House of Lords is but the culmination of a long-drawn conspiracy. The Government came into office, not to work the Constitution of the country, but to destroy it. . . .

10 The Budget, now waiting the sentence of the people, seems designed of set purpose to make every man who has invested his money in this country consider how he can remove it, and every man who is hesitating where to invest it determine to  
15 invest it abroad. The super-tax frightens some, the new death-duties cripple others, and, worse than all, the origin of the proposals and the principles on which they have been defended show clearly how thin is the dividing line which separates the policy of the  
20 Government from that of the avowed socialists.

[The result of the election was to put the Liberal party, with its allies, the Labor and the Nationalist parties, back into power with a total majority of 125 as against a majority before dissolution of about 334.]

25 12. *Annual Register*, 1910, p. 20. [Excerpt from the King's speech, Feb. 21st, on opening Parliament.]

My Lords and Gentlemen,—Recent experience has disclosed serious difficulties, due to recurring differ-

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ences of strong opinion between the two branches of the legislature. Proposals will be laid before you, with all convenient speed, to define the relations between the Houses of Parliament, so as to secure  
5 the undivided authority of the House of Commons over finance, and its predominance in legislation.

[With the opening of Parliament the Finance Bill of 1909 was reintroduced; it passed the Commons again on April 27, 1910, and went through the House of Lords  
10 next day.]

13. *Annual Register*, 1910, pp. 22, 23. [Debate on the Address, Feb. 21st.]

Mr. Asquith. . . . There was an overwhelming majority in the House absolutely pledged to deal with  
15 the veto, and the Government would ask the House of Commons to devote its opening session to this topic alone. To save time they proposed to proceed in the first instance by resolutions, which were to be embodied in a bill to be passed during the session,  
20 and on these he hoped that the House might pronounce before its spring recess. The Budget had to be reaffirmed. . . . The next step would be to obtain authority to renew, as they fell due, the Treasury Bills issued in consequence of the rejection of the  
25 Budget. . . .

14. *London Times*, March 18, 1910, p. 189. [Lord Rosebery's Resolutions in the House of Lords Committee, March 14th.]

1. That a strong and efficient Second Chamber is

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not merely an integral part of the British Constitution, but is necessary to the well-being of the state and to the balance of Parliament.

2. That such a Chamber can best be obtained by  
5 the reform and reconstitution of the House of Lords.

3. That a necessary preliminary of such reform and reconstitution is the acceptance of the principle that the possession of a peerage should no longer of itself give the right to sit and vote in the House of  
10 Lords.

15. *The Times*, March 25, 1910, p. 215. [Mr. Asquith's Resolutions in Committee (introduced March 29th).]

1. That it is expedient that the House of Lords  
15 be disabled by law from rejecting or amending a Money Bill, but that any such limitation by law shall not be taken to diminish or qualify the existing rights and privileges of the House of Commons. [Definition of a Money Bill follows.]

20 2. That it is expedient that the powers of the House of Lords, as respects bills other than Money Bills, be restricted by law, so that any such bill which has passed the House of Commons in three successive sessions and, having been sent up to the  
25 House of Lords at least one month before the end of the session, has been rejected by that House in each of these sessions, shall become law without the consent of the House of Lords, on the Royal Assent being declared. Provided that at least two years



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shall have elapsed between the date of the first introduction of the Bill in the House of Commons and the date on which it passes the House of Commons for the third time. For the purpose of this resolution a bill shall be treated as rejected by the House of Lords if it has not been passed by the House of Lords either without amendment or with such amendments only as may be agreed upon by both Houses.

10 3. That it is expedient to limit the duration of Parliament to five years.

16. *Annual Register*, 1910, p. 68. [Mr. Asquith, March 29th.]

The Commons must predominate; but a Second  
15 Chamber might usefully discharge the functions of consultation, of revision, and, subject to proper safeguards, of delay. Such a Chamber should be relatively small; its basis should be democratic, not hereditary; it must not be "governed by partisan-  
20 ship tempered by panic," and should be representative of and dependent on the will of the nation. The Government resolutions therefore were not put forward as a final or adequate solution.

17. *Annual Register*, 1910, p. 77. [Mr. Lloyd George, April 4th.]  
25

The real issue was the existence of a permanent anti-Liberal majority in the House of Lords. He dealt at length with its action since 1900; it accepted contentious Unionist bills for which there

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was no mandate, but rejected in the Parliament of 1906 five contentious measures out of six. . . . He ridiculed the fears entertained of socialism. If the people really wished for revolutionary measures, of  
5 what use would be the Lords' veto? Of what use was the King's veto in the French Revolution? The peers were just ordinary party men, and could not be an impartial jury. . . .

[In the midst of a complex political situation when  
10 it looked as if the King would be called upon by the government to create enough peers to put through the Parliament Bill, King Edward VII. died suddenly on May 6th. On June 16th it was decided that there would be a conference of eight men, four from each party, with a  
15 view to a compromise. That conference broke up on Nov. 10th without result.]

18. *Annual Register*, 1910, p. 241. Nov. 21st.

The Marquess of Lansdowne read out his resolutions. They embodied a scheme for settling differences between the Commons and the "reduced  
20 and reconstituted" House of Lords. A difference as to bills other than Money Bills in two successive sessions, and within an interval of not less than one year, was to be settled in a joint sitting composed of  
25 members of both Houses, provided that, if it related to a matter of great gravity and had not been adequately submitted to the judgment of the people, it should be submitted to the electors for decision by referendum. As to Money Bills, the Lords

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would forego their constitutional right to reject or amend Money Bills, purely financial in character, provided that effectual provision was made against tacking. . . .

5 19. *Annual Register*, 1910, p. 237. [Mr. Asquith at the National Liberal Club, Nov. 19th.]

He commented on the change in the Unionist attitude, quoting Dr. Johnson's saying regarding Dr. Dodd, "When a man knows he is going to be hanged  
10 in a fortnight it concentrates his mind wonderfully." In one sitting the House of Lords had been transformed—in principle—into a brand-new modern Senate . . . but meantime an instrument was wanted to remove deadlocks, and give the Liberals an equal  
15 chance in legislation.

[On Nov. 18th Mr. Asquith announced in the Commons that the Government had advised the King to bring that Parliament to an end. Parliament was dissolved on Nov. 28th, and the election was ended before Christmas.  
20 The result of the election was almost exactly the same as in January.]

20. *Annual Register*, 1911, pp. 27, 28.

The motion for leave to introduce the Parliament Bill was made by the Prime Minister on Tuesday,  
25 February 21. . . . Mr. Asquith . . . said that the situation was in some respects almost without precedent in the parliamentary annals of the country. The Bill was identical in every respect with that of 1910, which the electorate had since approved by a ma-

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5 jority of 120 in the United Kingdom and 60 in Great Britain. He dwelt on the divergence, under an unwritten constitution between legal powers and constitutional practice, pointing out that the crisis was occasioned by the sudden assertion of a disused legal right.

21. *The Times*, May 12, 1831, p. 371. [House of Lords Reconstitution Bill, introduced by Lord Lansdowne in the Lords, May 8th. Memorandum of.]

One hundred Lords of Parliament elected by the whole body of hereditary peers from among those hereditary peers who possess any of the qualifications set out in the schedule.

15 One hundred and twenty Lords of Parliament elected for electoral districts to be formed by commissioners throughout the United Kingdom—the election to be by electoral colleges composed of the members of the House of Commons for constituencies within each Electoral District.

One hundred Lords of Parliament appointed by His Majesty, on the advice of the Ministry of the day, in proportion to the strength of parties in the House of Commons.

25 Seven Spiritual Lords of Parliament consisting of the Archbishop of Canterbury, the Archbishop of York, and five Bishops elected by the Archbishops and Bishops of England and Wales.

Sixteen peers who have held high judicial office.

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The term of office of a Lord of Parliament would be 12 years, one fourth as nearly as may be of each category retiring every third year. . . .

A Peer unless a Lord of Parliament would be  
5 eligible for election to the House of Commons.

[On July 20, 1911, the Lords passed the Parliament Bill in a form so much amended that it was clear that the government would not accept it.]

22. *Annual Register*, 1911, p. 175. [Letter of Mr.  
10 Asquith.]

10 DOWNING ST., July 20.

DEAR MR. BALFOUR,—I think it is courteous and right, before any public decisions are announced, to let you know how we regard the political situation.

15 When the Parliament Bill in the form which it has now assumed returns to the House of Commons we shall be compelled to ask that House to disagree with the Lords' amendments.

In the circumstances, should the necessity arise,  
20 the Government will advise the King to exercise his prerogative to secure the passing into law of the Bill in substantially the same form in which it left the House of Commons, and his Majesty has been pleased to signify that he will consider it his duty to  
25 accept and act on that advice.—

Yours sincerely,

H. H. ASQUITH.

[The Commons, of course, rejected the Lords' amend-

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ments and sent the Bill back to the Lords, where it was accepted on Aug. 10th by a vote of 131 to 114.]

23. *Annual Register*, 1911, p. 190. [Mr. Asquith, Aug. 7th.]

- 5 It was at the King's strong desire and with his Majesty's express leave that he was able to disclose communications hitherto treated as confidential. After referring to his declaration of April 14, 1910—which was communicated to King Edward VII.,  
10 then abroad,—and saying that Ministers would have been false to their pledges had they gone into a dissolution, after the new reign and the break-down of the Conference, without some definite understanding, Mr. Asquith said that the advice to the  
15 King to dissolve was accompanied on November 15, 1910, with a statement which he read out as follows:

His Majesty's Ministers cannot take the responsibility of advising a dissolution unless they may understand that in the event of the policy of the Government being  
20 approved by an adequate majority in the new House of Commons his Majesty will be ready to exercise his constitutional powers, which may involve the prerogative of creating peers, if needed, to secure that effect shall be given to the decision of the country. His Majesty's  
25 Ministers are fully alive to the importance of keeping the name of the King out of the sphere of party and electoral controversy. They take upon themselves, as is their duty, the entire and exclusive responsibility for the policy which they would place before the electorate. His  
30 Majesty will doubtless agree that it would be inadvisable

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in the interests of the State that any communication of the intentions of the Crown should be made public unless and until the actual occasion should arise.

His Majesty, after discussing the matter in all  
5 its bearings, felt he had no alternative but to accept the advice of the Government. . . . The advice [Mr. Asquith continued] was constitutional; the circumstances were unique, and far stronger than in 1832.  
24. *Law Reports, the Public General Statutes, 1911.*  
10 p. 38. Statutes, 1 and 2, Geo. V. Ch. XIII.

Whereas it is expedient that provision should be made for regulating the relations between the two Houses of Parliament:

And whereas it is intended to substitute for the  
15 House of Lords as it at present exists a Second Chamber constituted on a popular instead of hereditary basis, but such substitution cannot be immediately brought into operation:

And whereas provision will require hereafter to  
20 be made by Parliament in a measure effecting such substitution for limiting and defining the powers of the new Second Chamber, but it is expedient to make such provision as in this act appears for restricting the existing powers of the House of Lords:

25 Be it therefore enacted . . . as follows:

1.—(1) If a Money Bill, having been passed by the House of Commons, and sent up to the House of Lords at least one month before the end of the session, is not passed by the House of Lords without

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amendment within one month after it is so sent up to that House, the Bill shall, unless the House of Commons direct to the contrary, be presented to his Majesty and become an Act of Parliament on  
5 the Royal Assent being signified, notwithstanding that the House of Lords have not consented to the Bill.

(3) There shall be endorsed on every Money Bill when it is sent up to the House of Lords and when it  
10 is presented to his Majesty for assent the certificate of the Speaker of the House of Commons signed by him that it is a Money Bill. . . .

2.—(1) If any Public Bill (other than a Money Bill or a Bill containing any provision to extend the  
15 maximum duration of Parliament beyond five years) is passed by the House of Commons in three successive sessions (whether of the same Parliament or not), and, having been sent up to the House of Lords at least one month before the end of the session, is  
20 rejected by the House of Lords in each of those sessions, that Bill shall, on its rejection for the third time by the House of Lords, unless the House of Commons direct to the contrary, be presented to his Majesty and become an Act of Parliament on  
25 the Royal Assent being signified thereto, notwithstanding that the House of Lords have not consented to the Bill: Provided that this provision shall not take effect unless two years have elapsed between the date of the second reading in the first of those



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sessions of the Bill in the House of Commons and the date on which it passes the House of Commons in the third of those sessions.

(3) A Bill shall be deemed to be rejected by the  
5 House of Lords if it is not passed by the House of Lords either without amendment or with such amendments only as may be agreed to by both Houses.

(4) A Bill shall be deemed to be the same Bill as  
10 a former Bill sent up to the House of Lords in the preceding session if, when it is sent up to the House of Lords, it is identical with the former Bill or contains only such alterations as are certified by the Speaker of the House of Commons to be necessary  
15 owing to the time which has elapsed since the date of the former Bill, or to represent any amendments which have been made by the House of Lords in the former Bill in the preceding session, and any amendments which are certified by the Speaker to have  
20 been made by the House of Lords in the third session and agreed to by the House of Commons shall be inserted in the Bill as presented for Royal Assent in pursuance of this section:

Provided that the House of Commons may, if  
25 they think fit, on the passage of such a Bill through the House in the second or third session suggest any further amendments without inserting the amendments in the Bill, and any such suggested amendments shall be considered by the House of Lords,

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and, if agreed to by that House, shall be treated as amendments made by the House of Lords and agreed to by the House of Commons; but the exercise of this power by the House of Commons shall not  
s affect the operation of this section in the event of the Bill being rejected by the House of Lords.

7. Five years shall be substituted for seven years as the time fixed for the maximum duration of Parliament under the Septennial Act, 1715.

# APPENDIX

## I

### CHARTER OF LIBERTIES OF HENRY I. 1100

(Latin text in Stubbs, *Select Charters*, ninth edition, pp. 117-119. Translation by the editor.)

Henry, king of the English, to Bishop Samson and Urso de Abetot and all his barons and faithful, both French and English, of Worcestershire,<sup>1</sup> greeting.

1. Know that by the mercy of God and the common counsel of the barons of the whole kingdom of England I have been crowned king of said kingdom; and because the kingdom had been oppressed by unjust exactions, I, through fear of God and the love which I have toward you all, in the first place make the holy church of God free, so that I will neither sell nor put to farm, nor on the death of archbishop or bishop or abbot will I take anything from the church's demesne or from its men until the successor shall enter it. And I take away all the bad customs by which the kingdom of England was unjustly oppressed; which bad customs I here set down in part:

2. If any of my barons, earls, or others who hold of me shall have died, his heir shall not buy back his land

<sup>1</sup>Copies were sent to all the shires.

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as he used to do in the time of my brother, but he shall relieve it by a just and lawful relief. Likewise also the men of my barons shall relieve their lands from their lords by a just and lawful relief.

3. And if any of my barons or other men should wish to give his daughter, sister, niece, or kinswoman in marriage, let him speak with me about it; but I will neither take anything from him for this permission nor prevent his giving her unless he should be minded to join her to my enemy. And if, upon the death of a baron or other of my men, a daughter is left as heir, I will give her with her land by the advice of my barons. And if, on the death of her husband, the wife is left and without children, she shall have her dowry and right of marriage, and I will not give her to a husband unless according to her will.

4. But if a wife be left with children, she shall indeed have her dowry and right of marriage so long as she shall keep her body lawfully, and I will not give her unless according to her will. And the guardian of the land and children shall be either the wife or another of the relatives who more justly ought to be. And I command that my barons restrain themselves similarly in dealing with the sons and daughters or wives of their men.

5. The common seigniorage, which has been taken through the cities and counties, but which was not taken in the time of King Edward, I absolutely forbid henceforth. If any one, whether a moneyer or other, be taken with false money, let due justice be done for it.

6. I remit all pleas and all debts which were owing to my brother, except my lawful fixed revenues and except those amounts which had been agreed upon for the inheritances of others or for things which more justly concerned others. And if any one had pledged anything

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for his own inheritance, I remit it; also all reliefs which had been agreed upon for just inheritances.

7. And if any of my barons or men shall grow feeble, as he shall give or arrange to give his money, I grant that it be so given. But if, prevented by arms or sickness, he shall not have given or arranged to give his money, his wife, children, relatives, or lawful men shall distribute it for the good of his soul as shall seem best to them.

8. If any of my barons or men commit a crime, he shall not bind himself to a payment at the king's mercy as he has been doing in the time of my father or my brother; but he shall make amends according to the extent of the crime as he would have done before the time of my father in the time of my other predecessors. But if he be convicted of treachery or heinous crime, he shall make amends as is just.

9. I forgive all murders committed before the day I was crowned king; and those which shall be committed in the future shall be justly compensated according to the law of King Edward.

10. By the common consent of my barons I have kept in my hands the forests as my father had them.

11. To those knights who render military service for their lands I grant of my own gift that the lands of their demesne ploughs be free from all payments and all labor, so that, having been released from so great a burden, they may equip themselves well with horses and arms and be fully prepared for my service and the defense of my kingdom.

12. I impose a strict peace upon my whole kingdom and command that it be maintained henceforth.

13. I restore to you the law of King Edward with those amendments introduced into it by my father with the advice of his barons.

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14. If any one, since the death of King William my brother, has taken anything belonging to me or to any one else, the whole is to be quickly restored without fine; but if any one keep anything of it, he upon whom it shall be found shall pay me a heavy fine.

Witnesses Maurice bishop of London, and William bishop elect of Winchester, and Gerard bishop of Hereford, and earl Henry, and earl Simon, and Walter Giffard, and Robert de Montfort, and Roger Bigot, and Eudo the steward, and Robert son of Hamo, and Robert Malet. At London when I was crowned. Farewell.

## II

### CONSTITUTIONS OF CLARENDON. 1164

(Latin text in Stubbs, *Select Charters*, ninth edition, pp. 163-167. Translation by the editor.)

From the year of our Lord's incarnation 1164, the fourth year of the papacy of Alexander, the tenth of the most illustrious Henry, king of the English, in the presence of the same king, was made this remembrance or recognition of a certain part of the customs, liberties, and dignities of his predecessors, that is to say of King Henry his grandfather and others, which ought to be observed and held in the kingdom. And because of dissensions and discords which had arisen between the clergy and the lord king's justices and the barons of the kingdom concerning the customs and dignities, this recognition has been made before the archbishops and bishops and clergy, and the earls and barons and great men of the kingdom. (And these same customs declared by the

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archbishops, bishops, earls, and barons, and by the nobler and older men of the kingdom, Thomas archbishop of Canterbury and Roger archbishop of York and Gilbert bishop of London and Henry bishop of Winchester and Nigel bishop of Ely and William bishop of Norwich and Robert bishop of Lincoln and Hilary bishop of Chichester and Jocelin bishop of Salisbury and Richard bishop of Chester and Bartholomew bishop of Exeter and Robert bishop of Hereford and David bishop of St. David's and Roger elect of Worcester conceded and on the word of truth firmly promised by word of mouth should be held and observed for the lord king and his heirs in good faith and without subtlety, these being present: Robert earl of Leicester, Reginald earl of Cornwall, Conan earl of Brittany, John earl of Eu, Roger earl of Clare, earl Geoffrey de Mandeville, Hugh earl of Chester, William earl of Arundel, earl Patrick, William earl of Ferrers, Richard de Luci, Reginald de St. Valery, Roger Bigot, Reginald de Warenne, Richer de Aquila, William de Braose, Richard de Camville, Nigel de Mowbray, Simon de Beauchamp, Humphrey de Bohun, Matthew de Hereford, Walter de Mayenne, Manser Biset the steward, William Malet, William de Courcy, Robert de Dunstaville, Jocelin de Baillol, William de Lanvallei, William de Caisnet, Geoffrey de Vere, William de Hastings, Hugh de Moreville, Alan de Neville, Simon Fitz Peter, William Maudit the chamberlain, John Maudit, John Marshall, Peter de Mara, and many other great men and nobles of the kingdom both clergy and laymen.

A certain part of the customs and dignities which were recognized is contained in the present writing. Of which part these are the articles:

1. If a controversy arise between laymen, or between laymen and clerks, or between clerks concerning patron-

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age and presentation of churches, it shall be treated or concluded in the court of the lord king.

2. Churches of the lord king's fee cannot be permanently bestowed without his consent and grant.

3. Clerks charged and accused of any matter, summoned by the king's justice, shall come into his court to answer there to whatever it shall seem to the king's court should be answered there; and in the church court to what it seems should be answered there; however the king's justice shall send into the court of holy Church for the purpose of seeing how the matter shall be treated there. And if the clerk be convicted or confess, the church ought not to protect him further.

4. It is not permitted the archbishops, bishops, and priests of the kingdom to leave the kingdom without the lord king's permission. And if they do leave they are to give security, if the lord king please, that they will seek no evil or damage to king or kingdom in going, in making their stay, or in returning.

5. Excommunicate persons ought not to give security for an indefinite time, or give an oath, but only security and pledge for submitting to the judgment of the church in order that they may be absolved.

6. Laymen ought not to be accused save by dependable and lawful accusers and witnesses in the presence of the bishop, yet so that the archdeacon lose not his right or anything which he ought to have thence. And if there should be those who are deemed culpable, but whom no one wishes or dares to accuse, the sheriff, upon the bishop's request, shall cause twelve lawful men of the neighborhood or the vill to take oath before the bishop that they will show the truth of the matter according to their conscience.

7. No one who holds of the king in chief or any of the



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officials of his demesne is to be excommunicated or his lands placed under interdict unless the lord king, if he be in the land, or his justiciar, if he be outside the kingdom, first gives his consent, that he may do for him what is right: yet so that what pertains to the royal court be concluded there, and what looks to the church court be sent thither to be concluded there.

8. As to appeals which may arise, they should pass from the archdeacon to the bishop, and from the bishop to the archbishop. And if the archbishop fail in furnishing justice, the matter should come to the lord king at the last, that at his command the litigation be concluded in the archbishop's court; and so because it should not pass further without the lord king's consent.

9. If litigation arise between a clerk and a layman or between a layman and a clerk concerning any holding which the clerk would bring to charitable tenure but the layman to lay fee, it shall be determined on the decision of the king's chief justice by the recognition of twelve lawful men in the presence of the king's justice himself whether the holding pertain to charitable tenure or to lay fee. And if the recognition declare it to be charitable tenure, it shall be litigated in the church court, but if lay fee, unless both plead under the same bishop or baron, the litigation shall be in the royal court. But if both plead concerning that fief under the same bishop or baron, it shall be litigated in his court; yet so that he who was first seised lose not his seisin on account of the recognition that was made, until the matter be determined by the plea.

10. If any one who is of a city, castle, borough, or demesne manor of the king shall be cited by archdeacon or bishop for any offense for which he ought to be held answerable to them and despite their summonses he re-

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fuse to do what is right, it is fully permissible to place him under interdict, but he ought not to be excommunicated before the king's chief official of that vill shall agree, in order that he may authoritatively constrain him to come to his trial. But if the king's official fail in this, he himself shall be in the lord king's mercy; and then the bishop shall be able to coerce the accused man by ecclesiastical authority.

11. Archbishops, bishops, and all ecclesiastics of the kingdom who hold of the king in chief have their possessions of the lord king as barony and answer for them to the king's justices and ministers and follow and do all royal rights and customs; and they ought, just like other barons, to be present at the judgments of the lord king's court along with the barons, until it come in judgment to loss of limbs or death.

12. When an archbishopric or bishopric, or an abbey or priory of the king's demesne shall be vacant, it ought to be in his hands, and he shall assume its revenues and expenses as pertaining to his demesne. And when the time comes to provide for the church, the lord king should notify the more important clergy of the church, and the election should be held in the lord king's own chapel with the assent of the lord king and on the advice of the clergy of the realm whom he has summoned for the purpose. And there, before he be consecrated, let the elect perform homage and fealty to the lord king as his liege lord for life, limbs, and earthly honor, saving his order.

13. If any of the great men of the kingdom should forcibly prevent archbishop, bishop, or archdeacon from administering justice in which he or his men were concerned, then the lord king ought to bring such an one to justice. And if it should happen that any one deforce the lord king of his right, archbishops, bishops, and arch-

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deacons ought to constrain him to make satisfaction to the lord king.

14. Chattels which have been forfeited to the king are not to be held in churches or cemeteries against the king's justice, because they belong to the king whether they be found inside churches or outside.

15. Pleas concerning debts, which are owed on the basis of an oath or in connection with which no oath has been taken, are in the king's justice.

16. Sons of villeins should not be ordained without the consent of the lord on whose land it is ascertained they were born.

The declaration of the above-mentioned royal customs and dignities has been made by the archbishops, bishops, earls, barons, and the nobler and older men of the kingdom, at Clarendon on the fourth day before the Purification of the Blessed Virgin Mary, lord Henry being present there with the lord king his father. There are, indeed, many other great customs and dignities of holy mother church and of the lord king and barons of the kingdom, which are not included in this writing, but which are to be preserved to holy church and to the lord king and his heirs and the barons of the kingdom, and are to be kept inviolate for ever.

### III

#### ASSIZE OF CLARENDON. 1166

(Latin text, Stubbs, *Select Charters*, ninth edition, pp. 170-173. Translation by the editor.)

Here begins the Assize of Clarendon made by King Henry II., with the assent of archbishops, bishops, abbots, earls, and barons of all England.

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1. In the first place the said King Henry ordained on the advice of all his barons, for preserving peace and maintaining justice, that inquiry be made through the several counties and through the several hundreds by twelve more lawful men of the hundred and by four more lawful men of each vill, upon oath that they will tell the truth, whether in their hundred or in their vill there is any man cited or charged as himself being a robber or murderer or thief or any one who has been a receiver of robbers or murderers or thieves since the lord king was king. And let the justices inquire this before themselves and the sheriffs before themselves.

2. And he who shall be found by the oath of the aforesaid cited or charged as having been a robber or murderer or thief or a receiver of them since the lord king was king, let him be arrested and go to the judgment of water, and let him swear that he was not a robber or murderer or thief or a receiver of them since the lord king was king, to the value of five shillings so far as he knows.

3. And if the lord of him who was arrested or his steward or his men demand him by pledge within the third day after his arrest, let him be given up and his chattels until he make his law.

4. And when a robber or murderer or thief or the receivers of them be arrested through the aforesaid oath, if the justices are not to come quite soon into the county where the arrests have been made, let the sheriffs send word by some intelligent man to one of the nearer justices that such men have been taken; and the justices shall send back word to the sheriffs where they wish to have the men brought before them; and the sheriffs shall bring them before the justices; and also they shall bring with them from the hundred and the vill where the arrests have been made two lawful men to carry the

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record of the county and hundred as to why the men were arrested, and there before the justices let them make their law.

5. And in the case of those who are arrested by the aforesaid oath of this assize no one is to have court or justice or chattels except the lord king in his court before his justices, and the lord king shall have all their chattels. But as to those who have been arrested otherwise than by this oath, let it be as it is accustomed and ought to be.

6. And let the sheriffs who have arrested them bring them before the justice without any other summons than they shall have from him. And when robbers, murderers, thieves, or their receivers, who have been arrested through the oath or otherwise, are turned over to the sheriffs, they are forthwith to receive them without delay.

7. And in the several counties where there are no jails, let them be made in a borough or in some castle of the king at the king's expense and from his wood if it is near, or from some neighboring wood, on the estimation of the king's servants, to the end that the sheriffs may keep in them those who have been arrested by the officers whose function it is to do this and by their servants.

8. Also it is the king's will that all come to the county courts to make this oath, so that no one stay away on account of any immunity which he has or court or jurisdiction which he has held; but they are to come to make this oath.

9. And let there not be any one within a castle or outside a castle, or indeed in the honor of Wallingford, who shall refuse to let the sheriffs enter his court or his land to view the frank-pledges and to see that all are under pledges; and let them be sent before the sheriffs under a free pledge.

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10. And let no one in the cities or boroughs have men or receive them into his house, land, or jurisdiction, whom he will not undertake to produce before the justice if they are sought; or else let him be in frank-pledge.

11. And let there be no one in city or borough, inside or outside a castle, or in the honor of Wallingford who shall deny entrance to the sheriffs into their land or jurisdiction for the purpose of arresting those who have been cited or charged as being robbers or murderers or thieves or the receivers of them, or outlaws or those cited in a matter touching the forest; but it is commanded that they help them in making the arrest.

12. And if any one be taken who has the spoil of his robbery or theft in his possession, if he bear an ill name and have a notoriously bad reputation, and have no warrant, let him not have law. But if he be not suspected on account of what he has in his possession, let him go to the water.

13. And if any one, in the presence of lawful men or the hundreds, make confession of robbery, murder, theft, or the reception of those committing them, and should later wish to deny it, let him not have law.

14. Moreover the lord king wills that those who make their law and are quit thereby, if they have a very bad reputation and are publicly and scandalously decried on the testimony of many lawful men, shall forswear the king's lands, to the effect that within eight days they shall cross the sea unless the wind detain them; and with the first wind which they have thereafter they shall cross the sea, and they shall never return to England unless by the grace of the lord king; and there let them be outlaws, and if they return let them be taken as outlaws.

15. And the lord king forbids that any waif, that is

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to say a vagrant or unknown person, be given lodging with any one except in a borough; and he is not to be lodged there except for one night, unless he be sick while there or his horse, so that he is able to show an evident excuse.

16. And if he should stay there more than one night, he is to be arrested and held until his lord come to stand pledge for him, or until he himself secure good pledges; and he who lodged him is also to be arrested.

17. And if a sheriff send word to another sheriff that men have fled from his county to the other county because of robbery, murder, theft, or the reception of those committing them, or for outlawry or an offense against the king's forest, let the latter sheriff arrest them; and indeed if he find out of himself or through others that such men have fled into his county, he is to arrest and hold them until he have sure pledges for them.

18. And let all the sheriffs make a list of all fugitives who have fled from their counties; and let them do this before the county courts, and they shall bring the names of these men in writing before the justices when first they come to them, in order that they may be sought throughout all England and their chattels seized for the benefit of the king.

19. And the lord king wills that as soon as the sheriffs receive the summonses of the itinerant justices to be before them with their county courts, they shall assemble their county courts and find out all who have recently come into their counties, since this assize; and they are to send these away under pledges to appear before the justices, or else keep them in custody until the justices come to them, and then produce them before the justices.

20. Also the lord king forbids monks or canons or any monastic house to receive any of the lower class of people

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as monk, canon, or brother until his reputation be known, unless he be sick unto death.

21. Moreover the lord king forbids that any one in all England should receive into his land or jurisdiction or any house of his, any of the sect of those apostates who have been excommunicated and branded at Oxford. And if any one receives them he shall be in the mercy of the lord king; and the house in which they were shall be carried outside the vill and burned. And every sheriff shall take oath to maintain this, and he shall cause to take the same oath all his ministers and the baron's stewards, and all the knights and freeholders of the counties.

22. And the lord king wills that this assize be held in his kingdom as long as it shall please him.

### IV

MAGNA CARTA. 1215

(Latin text and translation in McKechnie, *Magna Carta*, second edition, pp. 185-479, *passim*.)

John, by the grace of God, king of England, lord of Ireland, duke of Normandy and Aquitaine, and count of Anjou, to the archbishops, bishops, abbots, earls, barons, justiciars, foresters, sheriffs, stewards, servants, and to all his bailiffs and liege subjects, greeting. Know that, having regard to God and for the salvation of our soul, and those of all our ancestors and heirs, and unto the honor of God and the advancement of holy church, and for the reform of our realm, by advice of our venerable fathers, Stephen archbishop of Canterbury, primate of all England and cardinal of the holy Roman Church, Henry archbishop of Dublin, William of London, Peter



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of Winchester, Jocelyn of Bath and Glastonbury, Hugh of Lincoln, Walter of Worcester, William of Coventry, Benedict of Rochester, bishops; of master Pandulf, sub-deacon and member of the household of our lord the Pope, of brother Aymeric (master of the Knights of the Temple in England), and of the illustrious men William Marshall earl of Pembroke, William earl of Salisbury, William earl Warenne, William earl of Arundel, Alan of Galloway (constable of Scotland), Waren Fitz Gerald, Peter Fitz Herbert, Hubert de Burgh (seneschal of Poitou), Hugh de Neville, Matthew Fitz Herbert, Thomas Basset, Alan Basset, Philip d'Aubigny, Robert of Roppesley, John Marshall, John Fitz Hugh, and others, our liegemen.

1. In the first place we have granted to God, and by this our present charter confirmed for us and our heirs for ever that the English church shall be free, and shall have her rights entire, and her liberties inviolate; and we will that it be thus observed; which is apparent from this that the freedom of elections, which is reckoned most important and very essential to the English church, we, of our pure and unconstrained will, did grant, and did by our charter confirm and did obtain the ratification of the same from our lord, Pope Innocent III., before the quarrel arose between us and our barons: and this we will observe, and our will is that it be observed in good faith by our heirs for ever. We have also granted to all freemen of our kingdom, for us and our heirs for ever, all the under-written liberties, to be had and held by them and their heirs, of us and our heirs for ever.

2. If any of our earls or barons, or others holding of us in chief by military service shall have died, and at the time of his death his heir shall be of full age and owe "relief" he shall have his inheritance on payment of the ancient relief, namely the heir or heirs of an earl, £100

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for a whole earl's barony; the heir or heirs of a baron, £100 for a whole barony; the heir or heirs of a knight, 100s. at most for a whole knight's fee; and whoever owes less let him give less, according to the ancient custom of fiefs.

3. If, however, the heir of any of the aforesaid has been under age and in wardship, let him have his inheritance without relief and without fine when he comes of age.

4. The guardian of the land of an heir who is thus under age, shall take from the land of the heir nothing but reasonable produce, reasonable customs, and reasonable services, and that without destruction or waste of men or goods; and if we have committed the wardship of the lands of any such minor to the sheriff, or to any other who is responsible to us for its issues, and he has made destruction or waste of what he holds in wardship, we will take of him amends, and the land shall be committed to two lawful and discreet men of that fee, who shall be responsible for the issues to us or to him to whom we shall assign them; and if we have given or sold the wardship of any such land to any one and he has therein made destruction or waste, he shall lose that wardship, and it shall be transferred to two lawful and discreet men of that fief, who shall be responsible to us in like manner as aforesaid.

5. The guardian, moreover, so long as he has the wardship of the land, shall keep up the houses, parks, fishponds, stanks, mills, and other things pertaining to the land, out of the issues of the same land; and he shall restore to the heir, when he has come to full age, all his land, stocked with ploughs and "waynage," according as the season of husbandry shall require, and the issues of the land can reasonably bear.

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6. Heirs shall be married without disparagement, yet so that before the marriage takes place the nearest in blood to that heir shall have notice.

7. A widow, after the death of her husband, shall forthwith and without difficulty have her marriage portion and inheritance; nor shall she give anything for her dower, or for her marriage portion, or for the inheritance which her husband and she held on the day of the death of that husband; and she may remain in the house of her husband for forty days after his death, within which time her dower shall be assigned to her.

8. No widow shall be compelled to marry, so long as she prefers to live without a husband; provided always that she gives security not to marry without our consent, if she holds of us, or without the consent of the lord of whom she holds, if she holds of another.

9. Neither we nor our bailiffs shall seize any land or rent for any debt, so long as the chattels of the debtor are sufficient to repay the debt; nor shall the sureties of the debtor be distrained so long as the principal debtor is able to satisfy the debt; and if the principal debtor shall fail to pay the debt, having nothing wherewith to pay it, then the sureties shall answer for the debt; and let them have the lands and rents of the debtor, if they desire them, until they are indemnified for the debt which they have paid for him, unless the principal debtor can show proof that he is discharged thereof as against the said sureties

10. If one who has borrowed from the Jews any sum, great or small, die before that loan can be repaid, the debt shall not bear interest while the heir is under age, of whomsoever he may hold; and if the debt fall into our hands, we will not take anything except the principal sum contained in the bond.

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11. And if any one die indebted to the Jews, his wife shall have her dower and pay nothing of that debt; and if any children of the deceased are left under age, necessities shall be provided for them in keeping with the holding of the deceased; and out of the residue the debt shall be paid, reserving, however, service due to feudal lords; in like manner let it be done touching debts due to others than Jews.

12. No scutage nor aid shall be imposed on our kingdom, unless by common counsel of our kingdom, except for ransoming our person, for making our eldest son a knight, and for once marrying our eldest daughter; and for these there shall not be levied more than a reasonable aid. In like manner it shall be done concerning aids from the city of London.

13. And the city of London shall have all its ancient liberties and free customs, as well by land as by water; furthermore, we decree and grant that all other cities, boroughs, towns, and ports shall have all their liberties and free customs.

14. And for obtaining the common counsel of the kingdom anent the assessing of an aid (except in the three cases aforesaid) or of a scutage, we will cause to be summoned the archbishops, bishops, abbots, earls, and greater barons, severally by our letters; and we will moreover cause to be summoned generally, through our sheriffs and bailiffs, all others who hold of us in chief, for a fixed date, namely, after the expiry of at least forty days, and at a fixed place; and in all letters of such summons we will specify the reason of the summons. And when the summons has thus been made, the business shall proceed on the day appointed, according to the counsel of such as are present, although not all who were summoned have come.

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15. We will not for the future grant to any one license to take an aid from his own free tenants, except to ransom his body, to make his eldest son a knight, and once to marry his eldest daughter; and on each of these occasions there shall be levied only a reasonable aid.

16. No one shall be distrained for performance of greater service for a knight's fee, or for any other free tenement, than is due therefrom.

17. Common pleas shall not follow our court, but shall be held in some fixed place.

18. Inquests of novel disseisin, of mort d'ancestor, and of darrein presentment, shall not be held elsewhere than in their own county courts and that in manner following,—We, or, if we should be out of the realm, our chief justiciar, will send two justiciars through every county four times a year, who shall, along with four knights of the county chosen by the county, hold the said assize in the county court, on the day and in the place of meeting of that court.

19. And if any of the said assizes cannot be taken on the day of the county court, let there remain of the knights and freeholders, who were present at the county court on that day, as many as may be required for the efficient making of judgments, according as the business be more or less.

20. A freeman shall not be amerced for a slight offense, except in accordance with the degree of the offense; and for a grave offense he shall be amerced in accordance with the gravity of the offense, yet saving always his "contenement"; and a merchant in the same way, saving his "merchandise"; and a villein shall be amerced in the same way, saving his "wainage"—if they have fallen into our mercy: and none of the aforesaid amerce-

## Source Problems in English History

ments shall be imposed except by the oath of honest men of the neighborhood.

21. Earls and barons shall not be amerced except through their peers, and only in accordance with the degree of the offense.

22. A clerk shall not be amerced in respect of his lay holding except after the manner of the others aforesaid; further, he shall not be amerced in accordance with the extent of his ecclesiastical benefice.

23. No village or individual shall be compelled to make bridges at river-banks, except those who from of old were legally bound to do so.

24. No sheriff, constable, coroners, or others of our bailiffs, shall hold pleas of our Crown.

25. All counties, hundreds, wapentakes, and trithings (except our demesne manors) shall remain at the old rents, and without any additional payment.

26. If any one holding of us a lay fief shall die, and our sheriff or bailiff shall exhibit our letters patent of summons for a debt which the deceased owed to us, it shall be lawful for our sheriff or bailiff to attach and catalogue chattels of the deceased, found upon the lay fief, to the value of that debt, at the sight of law-worthy men, provided always that nothing whatever be thence removed until the debt which is evident shall be fully paid to us; and the residue shall be left to the executors to fulfil the will of the deceased; and if there be nothing due from him to us, all the chattels shall go to the deceased, saving to his wife and children their reasonable shares.

27. If any freeman shall die intestate, his chattels shall be distributed by the hands of his nearest kinsfolk and friends, under supervision of the church, saving to every one the debts which the deceased owed to him.

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28. No constable or other bailiff of ours shall take corn or other provisions from any one without immediately tendering money therefor, unless he can have postponement thereof by permission of the seller.

29. No constable shall compel any knight to give money in lieu of castle-guard, when he is willing to perform it in his own person, or (if he cannot do it from any reasonable cause) then by another responsible man. Further, if we have led or sent him upon military service, he shall be relieved from guard in proportion to the time during which he has been on service because of us.

30. No sheriff or bailiff of ours, or other person, shall take the horses or carts of any freeman for transport duty, against the will of the said freeman.

31. Neither we nor our bailiffs shall take, for our castles or for any other work of ours, wood which is not ours, against the will of the owner of that wood.

32. We will not retain beyond one year and one day, the lands of those who have been convicted of felony, and the lands shall thereafter be handed over to the lords of the fiefs.

33. All kiddles for the future shall be removed altogether from Thames and Medway, and throughout all England, except upon the seashore.

34. The writ which is called *præcipe* shall not for the future be issued to any one, regarding any tenement whereby a freeman may lose his court.

35. Let there be one measure of wine throughout our whole realm; and one measure of ale; and one measure of corn, to wit, "the London quarter"; and one width of cloth (whether dyed, or russet, or "halberget"), to wit, two ells within the selvages; of weights also let it be as of measures.

36. Nothing in future shall be given or taken for a

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writ of inquisition of life or limbs, but freely it shall be granted, and never denied.

37. If any one holds of us by fee-farm, by socage, or by burgage, and holds also land of another lord by knight's service, we will not (by reason of that fee-farm, socage, or burgage) have the wardship of the heir, or of such land of his as is of the fief of that other; nor shall we have wardship of that fee-farm, socage, or burgage, unless such fee-farm owes knight's service. We will not by reason of any small serjeanty which any one may hold of us by the service of rendering to us knives, arrows, or the like, have wardship of his heir or of the land which he holds of another lord by knight's service.

38. No bailiff for the future shall, upon his own unsupported complaint, put any one to his "law," without credible witnesses brought for this purpose.

39. No freeman shall be taken or imprisoned or disseised or exiled or in any way destroyed, nor will we go upon him nor send upon him, except by the lawful judgment of his peers or by the law of the land.

40. To no one will we sell, to no one will we refuse or delay, right or justice.

41. All merchants shall have safe and secure exit from England, and entry to England, with the right to tarry there and to move about as well by land as by water, for buying and selling by the ancient and right customs, quit from all evil tolls, except (in time of war) such merchants as are of the land at war with us. And if such are found in our land at the beginning of the war, they shall be detained, without injury to their bodies or goods, until information be received by us, or by our chief justiciar, how the merchants of our land found in the land at war with us are treated; and if our men are safe there, the others shall be safe in our land.



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42. It shall be lawful in future for any one (excepting always those imprisoned or outlawed in accordance with the law of the kingdom, and natives of any country at war with us, and merchants, who shall be treated as is above provided) to leave our kingdom and to return, safe and secure by land and water, except for a short period in time of war, on grounds of public policy—reserving always the allegiance due to us.

43. If any one holding of some escheat (such as the honor of Wallingford, Nottingham, Boulogne, Lancaster, or of other escheats which are in our hands and are baronies) shall die, his heir shall give no other relief, and perform no other service to us than he would have done to the baron, if that barony had been in the baron's hand; and we shall hold it in the same manner in which the baron held it.

44. Men who dwell without the forest need not henceforth come before our justiciars of the forest upon a general summons, except those who are impleaded, or who have become sureties for any person or persons attached for forest offenses.

45. We will appoint as justices, constables, sheriffs, or bailiffs only such as know the law of the realm and mean to observe it well.

46. All barons who have founded abbeys, concerning which they hold charters from the kings of England, or of which they have long-continued possession, shall have the wardship of them, when vacant, as they ought to have.

47. All forests that have been made such in our time shall forthwith be disafforested; and a similar course shall be followed with regard to river-banks that have been placed "in defense" by us in our time.

48. All evil customs connected with forests and warrens,

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foresters and warreners, sheriffs and their officers, river-banks and their wardens, shall immediately be inquired into in each county by twelve sworn knights of the same county chosen by the honest men of the same county, and shall, within forty days of the said inquest, be utterly abolished, so as never to be restored, provided always that we previously have intimation thereof, or our justiciar, if we should not be in England.

49. We will immediately restore all hostages and charters delivered to us by Englishmen, as sureties of the peace or of faithful service.

50. We will entirely remove from their bailiwicks, the relations of Gerard of Athée (so that in future they shall have no bailiwick in England); namely, Engelard of Cigogné, Peter, Guy, and Andrew of Chanceaux, Guy of Cigogné, Geoffrey of Martigny with his brothers, Philip Mark with his brothers and his nephew Geoffrey, and the whole brood of the same.

51. As soon as peace is restored, we will banish from the kingdom all foreign-born knights, cross-bowmen, serjeants, and mercenary soldiers, who have come with horses and arms to the kingdom's hurt.

52. If any one has been dispossessed or removed by us, without the legal judgment of his peers, from his lands, castles, franchises, or from his right, we will immediately restore them to him; and if a dispute arise over this, then let it be decided by the five-and-twenty barons of whom mention is made below in the clause for securing the peace. Moreover, for all those possessions, from which any one has, without the lawful judgment of his peers, been disseised or removed, by our father, King Henry, or by our brother, King Richard, and which we retain in our hand (or which are possessed by others, to whom we are bound to warrant them) we shall have

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respite until the usual term of crusaders; excepting those things about which a plea has been raised, or an inquest made by our order, before our taking of the cross; but as soon as we return from our expedition (or if perchance we desist from the expedition) we will immediately grant full justice therein.

53. We shall have, moreover, the same respite and in the same manner in rendering justice concerning the disafforestation or retention of those forests which Henry our father and Richard our brother afforested, and concerning the wardship of lands which are of the fief of another (namely, such wardships as we have hitherto had by reason of a fief which any one held of us by knight's service), and concerning abbeys founded on other fiefs than our own, in which the lord of the fief claims to have right; and when we have returned, or if we desist from our expedition, we will immediately grant full justice to all who complain of such things.

54. No one shall be arrested or imprisoned upon the appeal of a woman, for the death of any other than her husband.

55. All fines made with us unjustly and against the law of the land, and all amercements imposed unjustly and against the law of the land, shall be entirely remitted, or else it shall be done concerning them according to the decision of the five-and-twenty barons of whom mention is made below in the clause for securing the peace, or according to the judgment of the majority of the same, along with the aforesaid Stephen, archbishop of Canterbury, if he can be present, and such others as he may wish to bring with him for this purpose, and if he cannot be present the business shall nevertheless proceed without him, provided always that if any one or more of the aforesaid five-and-twenty barons are in a

## Source Problems in English History

similar suit, they shall be removed as far as concerns this particular judgment, others being substituted in their places after having been selected by the rest of the same five-and-twenty for this purpose only, and after having been sworn.

56. If we have disseised or removed Welshmen from lands or liberties, or other things, without the legal judgment of their peers in England or in Wales, they shall be immediately restored to them; and if a dispute arise over this, then let it be decided in the marches by the judgment of their peers; for tenements in England according to the law of England, for tenements in Wales according to the law of Wales, and for tenements in the marches according to the law of the marches. Welshmen shall do the same to us and ours.

57. Further, for all those possessions from which any Welshman has, without the lawful judgment of his peers, been disseised or removed by King Henry our father or King Richard our brother, and which we retain in our hand (or which are possessed by others, to whom we are bound to warrant them) we shall have respite until the usual term of crusaders; excepting those things about which a plea has been raised or an inquest made by our order before we took the cross; but as soon as we return (or if perchance we desist from our expedition), we will immediately grant full justice in accordance with the laws of the Welsh and in relation to the foresaid regions.

58. We will immediately give up the son of Llywelyn and all the hostages of Wales, and the charters delivered to us as security for the peace.

59. We will do toward Alexander, King of Scots, concerning the return of his sisters and his hostages, and concerning his franchises, and his right, in the same

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manner as we shall do toward our other barons of England, unless it ought to be otherwise according to the charters which we hold from William his father, formerly King of Scots; and this shall be according to the judgment of his peers in our court.

60. Moreover, all these aforesaid customs and liberties, the observance of which we have granted in our kingdom as far as pertains to us toward our men, shall be observed by all of our kingdom, as well clergy as laymen, as far as pertains to them toward their men.

61. Since, moreover, for God and the amendment of our kingdom and for the better allaying of the quarrel that has arisen between us and our barons, we have granted all these concessions, desirous that they should enjoy them in complete and firm endurance for ever, we give and grant to them the underwritten security, namely, that the barons choose five-and-twenty barons of the kingdom, whomsoever they will, who shall be bound with all their might, to observe and hold, and cause to be observed, the peace and liberties we have granted and confirmed to them by this our present Charter, so that if we, or our justiciar, or our bailiffs or any one of our officers, shall in anything be at fault toward any one, or shall have broken any one of the articles of the peace or of this security, and the offense be notified to four barons of the foresaid five-and-twenty, the said four barons shall repair to us (or our justiciar, if we are out of the realm) and, laying the transgression before us, petition to have that transgression redressed without delay. And if we shall not have corrected the transgression (or, in the event of our being out of the realm, if our justiciar shall not have corrected it) within forty days, reckoning from the time it has been intimated to us (or to our

## Source Problems in English History

justiciar, if we should be out of the realm), the four barons aforesaid shall refer that matter to the rest of the five-and-twenty barons, and those five-and-twenty barons shall, together with the community of the whole land, distrain and distress us in all possible ways, namely, by seizing our castles, lands, possessions, and in any other way they can, until redress has been obtained as they deem fit, saving harmless our own person, and the persons of our queen and children; and when redress has been obtained, they shall resume their old relations toward us. And let whoever in the country desires it, swear to obey the orders of the said five-and-twenty barons for the execution of all the aforesaid matters, and along with them, to molest us to the utmost of his power; and we publicly and freely grant leave to every one who wishes to swear, and we shall never forbid any one to swear. All those, moreover, in the land who of themselves and of their own accord are unwilling to swear to the twenty-five to help them in constraining and molesting us, we shall by our command compel the same to swear to the effect foresaid. And if any one of the five-and-twenty barons shall have died or departed from the land, or be incapacitated in any other manner which would prevent the foresaid provisions being carried out, those of the said twenty-five barons who are left shall choose another in his place according to their own judgment, and he shall be sworn in the same way as the others. Further, in all matters, the execution of which is intrusted to these twenty-five barons, if perchance these twenty-five are present and disagree about anything, or if some of them, after being summoned, are unwilling or unable to be present, that which the majority of those present ordain or command shall be held as fixed and established, exactly as if the whole twenty-five had concurred in this; and

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the said twenty-five shall swear that they will faithfully observe all that is aforesaid, and cause it to be observed with all their might. And we shall procure nothing from any one, directly or indirectly, whereby any part of these concessions and liberties might be revoked or diminished; and if any such thing has been procured, let it be void and null, and we shall never use it personally or by another.

62. And all the ill-will, hatreds, and bitterness that have arisen between us and our men, clergy and lay, from the date of the quarrel, we have completely remitted and pardoned to every one. Moreover, all trespasses occasioned by the said quarrel, from Easter in the sixteenth year of our reign till the restoration of peace, we have fully remitted to all, both clergy and laymen, and completely forgiven, as far as pertains to us. And, on this head, we have caused to be made for them letters testimonial patent of the lord Stephen, archbishop of Canterbury, of the lord Henry, archbishop of Dublin, of the bishops aforesaid, and of Master Pandulf as touching this security and the concessions aforesaid.

63. Wherefore it is our will, and we firmly enjoin, that the English Church be free, and that the men in our kingdom have and hold all the aforesaid liberties, rights, and concessions, well and peaceably, freely and quietly, fully and wholly, for themselves and their heirs, of us and our heirs, in all respects and in all places for ever, as is aforesaid. An oath, moreover, has been taken, as well on our part as on the part of the barons, that all these conditions aforesaid shall be kept in good faith and without evil intent. Given under our hand—the above-named and many others being witnesses—in the meadow which is called Runnymede, between Windsor and

## Source Problems in English History

Staines, on the fifteenth day of June, in the seventeenth year of our reign.

### V

#### CONFIRMATION OF THE CHARTERS. 1297

(French text and translation in Stubbs, *Select Charters*, ninth edition, pp. 490-493.)

I. Edward, by the grace of God, King of England, Lord of Ireland, and Duke of Aquitaine, to all those that these present letters shall hear or see, greeting. Know ye that we to the honor of God and of holy Church, and to the profit of all our realm, have granted for us and our heirs, that the Great Charter of Liberties and the Charter of the Forest, which were made by common assent of all the realm, in the time of King Henry our father, shall be kept in every point without breach. And we will that these same charters shall be sent under our seal to our justices, both to those of the forest and to the rest, and to all sheriffs of shires, and to all our other officers, and to all our cities throughout the realm, together with our writs in which it shall be contained, that they cause the aforesaid charters to be published, and have it declared to the people that we have granted that they shall be observed in all points, and that our justices, sheriffs, mayors, and other officials which under us have to administer the laws of our land, shall allow the said charters in pleas before them and in judgments in all their points; that is to wit, the Great Charter as the common law and the Charter of the Forest according to the Assize of the Forest, for the relief of our people.

II. And we will that if any judgment be given from henceforth, contrary to the points of the charters afore-



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said, by the justices or by any other our ministers that hold plea before them against the points of the charters, it shall be undone and holden for naught.

III. And we will that the same charters shall be sent under our seal to cathedral churches throughout our realm, and there remain, and shall be read before the people twice in the year.

IV. And that archbishops and bishops shall pronounce sentences of greater excommunication against all those that by word, deed, or counsel shall go against the fore-said charters, or that in any point break or go against them. And that the said curses be twice a year denounced and published by the prelates aforesaid. And if the same prelates or any of them be remiss in the denunciation of the said sentences, the Archbishops of Canterbury and York for the time being, as is fitting, shall reprove them and constrain them to make that denunciation in form aforesaid.

V. And for so much as divers people of our realm are in fear that the aids and mises which they have given to us beforetime toward our wars and other businesses, of their own grant and good-will, howsoever they were made, might turn to a bondage to them and their heirs, because they might be at another time found in the rolls, and so likewise the prises taken throughout the realm by our ministers in our name: we have granted for us and our heirs, that we shall never draw such aids, mises, nor prises into a custom for anything that hath been done heretofore or that may be found by roll or in any other manner.

VI. Moreover we have granted for us and our heirs, as well to archbishops, bishops, abbots, priors, and other folk of holy Church, as also to earls, barons, and to all the community of the land, that for no business from

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henceforth will we take such manner of aids, mises, nor prises from our realm, but by the common assent of all the realm, and for the common profit thereof, saving the ancient aids and prises due and accustomed.

VII. And for so much as the more part of the community of the realm find themselves sore grieved with the maletote on wools, that is to wit, a toll of forty shillings for every sack of wool, and have made petition to us to release the same; we, at their requests, have fully released it, and have granted that we shall never take this nor any other without their common assent and good-will; saving to us and our heirs the custom of wools, skins, and leather granted before by the commonalty aforesaid. In witness of which things we have caused to be made these our letters patent. Given at Ghent the fifth day of November in the twenty-fifth year of our reign.

### VI

#### PETITION OF RIGHT. 1628

(Stubbs, *Select Charters*, eighth edition, pp. 515-517.)

The Petition exhibited to his Majesty by the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, concerning divers Rights and Liberties of the Subjects, with the King's Majesty's royal answer thereunto in full Parliament.

#### TO THE KING'S MOST EXCELLENT MAJESTY

Humbly show unto our Sovereign Lord the King, the Lords Spiritual and Temporal, and Commons in Parliament assembled, that whereas it is declared and enacted

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by a statute made in the time of the reign of King Edward I., commonly called *Statutum de Tallagio non Concedendo*, that no tallage or aid shall be laid or levied by the king or his heirs in this realm, without the good-will and assent of the archbishops, bishops, earls, barons, knights, burgesses, and other the freemen of the commonalty of this realm; and by authority of parliament holden in the five-and-twentieth year of the reign of King Edward III., it is declared and enacted, that from thenceforth no person should be compelled to make any loans to the king against his will, because such loans were against reason and the franchise of the land; and by other laws of this realm it is provided, that none should be charged by any charge or imposition called a benevolence, nor by such like charge; by which statutes before mentioned, and other the good laws and statutes of this realm, your subjects have inherited this freedom, that they should not be compelled to contribute to any tax, tallage, aid, or other like charge not set by common consent, in parliament.

II. Yet nevertheless of late divers commissions directed to sundry commissioners in several counties, with instructions, have issued; by means whereof your people have been in divers places assembled, and required to lend certain sums of money unto your Majesty, and many of them, upon their refusal so to do, have had an oath administered unto them not warrantable by the laws or statutes of this realm, and have been constrained to become bound and make appearance and give utterance before your Privy Council and in other places, and others of them have been therefore imprisoned, confined, and sundry other ways molested and disquieted; and divers other charges have been laid and levied upon your people in several counties by lord lieutenants, deputy lieutenants, commissioners for musters, justices of peace and others,

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by command or direction from your Majesty, or your Privy Council, against the laws and free customs of the realm.

III. And whereas also by the statute called "The Great Charter of the liberties of England," it is declared and enacted, that no freeman may be taken or imprisoned or be disseised of his freehold or liberties, or his free customs, or be outlawed or exiled, or in any manner destroyed, but by the lawful judgment of his peers, or by the law of the land.

IV. And in the eight-and-twentieth year of the reign of King Edward III., it was declared and enacted by authority of parliament, that no man, of what estate or condition that he be, should be put out of his land or tenements, nor taken, nor imprisoned, nor disherited, nor put to death without being brought to answer by due process of law.

V. Nevertheless, against the tenor of the said statutes, and other the good laws and statutes of your realm to that end provided, divers of your subjects have of late been imprisoned without any cause showed; and when for their deliverance they were brought before your justices by your Majesty's writs of *habeas corpus*, there to undergo and receive as the court should order, and their keepers commanded to certify the causes of their detainer, no cause was certified, but that they were detained by your Majesty's special command, signified by the lords of your Privy Council, and yet were returned back to several prisons, without being charged with anything to which they might make answer according to the law.

VI. And whereas of late great companies of soldiers and mariners have been dispersed into divers counties of the realm, and the inhabitants against their wills have been compelled to receive them into their houses, and

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there to suffer them to sojourn against the laws and customs of this realm, and to the great grievance and vexation of the people.

VII. And whereas also by authority of parliament, in the five-and-twentieth year of the reign of King Edward III., it is declared and enacted, that no man shall be forejudged of life or limb against the form of the Great Charter and the law of the land; and by the said Great Charter and other the laws and statutes of this your realm, no man ought to be adjudged to death but by the laws established in this your realm, either by the customs of the same realm, or by acts of parliament: and whereas no offender of what kind soever is exempted from the proceedings to be used, and punishments to be inflicted by the laws and statutes of this your realm; nevertheless of late time divers commissions under your Majesty's great seal have issued forth by which certain persons have been assigned and appointed commissioners with power and authority to proceed within the land, according to the justice of martial law, against such soldiers or mariners, or other dissolute persons joining with them, as should commit any murder, robbery, felony, mutiny, or other outrage or misdemeanor whatsoever, and by such summary course and order as is agreeable to martial law, and as is used in armies in time of war, to proceed to the trial and condemnation of such offenders, and them to cause to be executed and put to death according to the law martial.

VIII. By pretext whereof some of your Majesty's subjects have been by some of the said commissioners put to death, when and where, if by the laws and statutes of the land they had deserved death, by the same laws and statutes also they might, and by no other ought to have been judged and executed.

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IX. And also sundry grievous offenders, by color thereof claiming an exemption, have escaped the punishments due to them by the laws and statutes of this your realm, by reason that divers of your officers and ministers of justice have unjustly refused or forborne to proceed against such offenders according to the same laws and statutes, upon pretense that the said offenders were punishable only by martial law, and by authority of such commissions as aforesaid; which commissions, and all other of like nature, are wholly and directly contrary to the said laws and statutes of this your realm.

X. They do therefore humbly pray your most excellent Majesty, that no man hereafter be compelled to make or yield any gift, loan, benevolence, tax, or such like charge, without common consent by act of parliament; and that none be called to make answer, or take such oath, or to give attendance, or be confined, or otherwise molested or disquieted concerning the same or for refusal thereof; and that no freeman, in any such manner as is before mentioned, be imprisoned or detained; and that your Majesty would be pleased to remove the said soldiers and mariners, and that your people may not be so burdened in time to come; and that the aforesaid commissions, for proceeding by martial law, may be revoked and annulled; and that hereafter no commissions of like nature may issue forth to any person or persons whatsoever to be executed as aforesaid, lest by color of them any of your Majesty's subjects be destroyed or put to death contrary to the laws and franchise of the land.

XI. All which they most humbly pray of your most excellent Majesty as their rights and liberties, according to the laws and statutes of this realm; and that your Majesty would also vouchsafe to declare, that the awards, doings, and proceedings, to the prejudice of your people

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in any of the premises, shall not be drawn hereafter in consequence or example; and that your Majesty would be also graciously pleased, for the further comfort and safety of your people, to declare your royal will and pleasure, that in the things aforesaid all your officers and ministers shall serve you according to the laws and statutes of this realm, as they tender the honor of your Majesty, and the prosperity of this kingdom.

*Qua quidem petitione lecta et plenius intellecta per dictum dominum regem taliter est responsum in pleno parlamento viz. Soit droit fait come est désiré.<sup>1</sup>*

### VII

#### BILL OF RIGHTS. 1689

(Stubbs, *Select Charters*, eighth edition, pp. 523-528.)

Whereas the Lords Spiritual and Temporal, and Commons, assembled at Westminster, lawfully, fully, and freely representing all the estates of the people of this realm, did, upon the thirteenth day of February, in the year of our Lord one thousand six hundred eighty-eight, present

<sup>1</sup> "Which petition having been read and more fully understood, answer was made thus in full parliament by the said lord king, to wit: Let right be done as it is petitioned." This final and satisfactory answer of the king was obtained on June 7th. The comparative adverb *plenius* ("more fully") is perhaps reminiscent of the reading five days earlier when the king had returned his evasive answer in these words: "The King willeth that right be done according to the laws and customs of the realm; and that the statutes be put in due execution, that his subjects may have no cause to complain of any wrong or oppressions, contrary to their just rights and liberties, to the preservation whereof he holds himself as well obliged as of his prerogative." The Commons wished a specific confirmation of the laws cited in the Petition.

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unto their Majesties, then called and known by the names and style of William and Mary, Prince and Princess of Orange, being present in their proper persons, a certain declaration in writing, made by the said Lords and Commons, in the words following; viz.:—

Whereas the late King James II., by the assistance of diverse evil counsellors, judges, and ministers employed by him, did endeavor to subvert and extirpate the Protestant religion, and the laws and liberties of this kingdom:

1. By assuming and exercising a power of dispensing with and suspending of laws, and the execution of laws, without consent of parliament.

2. By committing and prosecuting diverse worthy prelates, for humbly petitioning to be excused from concurring to the same assumed power.

3. By issuing and causing to be executed a commission under the Great Seal for erecting a court, called the Court of Commissioners for Ecclesiastical Causes.

4. By levying money for and to the use of the Crown, by pretense of prerogative, for other time, and in other manner than the same was granted by parliament.

5. By raising and keeping a standing army within this kingdom in time of peace, without consent of parliament, and quartering soldiers contrary to law.

6. By causing several good subjects, being Protestants, to be disarmed, at the same time when Papists were both armed and employed contrary to law.

7. By violating the freedom of election of members to serve in parliament.

8. By prosecutions in the Court of King's Bench, for matters and causes cognizable only in parliament; and by diverse other arbitrary and illegal courses.

9. And whereas of late years, partial, corrupt, and un-



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qualified persons have been returned and served on juries in trials, and particularly diverse jurors in trials for high treason, which were not freeholders.

10. And excessive bail hath been required of persons committed in criminal cases, to elude the benefit of the laws made for the liberty of the subjects.

11. And excessive fines have been imposed; and illegal and cruel punishments inflicted.

12. And several grants and promises made of fines and forfeitures, before any conviction or judgment against the persons upon whom the same were to be levied.

All which are utterly and directly contrary to the known laws and statutes, and freedom of this realm.

And whereas the said late King James II. having abdicated the government, and the throne being thereby vacant, his Highness the Prince of Orange (whom it hath pleased Almighty God to make the glorious instrument of delivering this kingdom from popery and arbitrary power) did (by the advice of the Lords Spiritual and Temporal, and diverse principal persons of the Commons) cause letters to be written to the Lords Spiritual and Temporal, being Protestants, and other letters to the several counties, cities, universities, boroughs, and cinque ports, for the choosing of such persons as represent them, as were of right to be sent to parliament, to meet and sit at Westminster upon the two-and-twentieth day of January, in this year one thousand six hundred eighty and eight, in order to such an establishment, as that their religion, laws, and liberties might not again be in danger of being subverted; upon which letters, elections have been accordingly made.

And thereupon the said Lords Spiritual and Temporal, and Commons, pursuant to their respective letters and elections, being now assembled in a full and free repre-

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sentation of this nation, taking into their most serious consideration the best means for attaining the ends afore-said, do in the first place (as their ancestors in like case have usually done), for the vindicating and asserting their ancient rights and liberties, declare:—

1. That the pretended power of suspending of laws, or the execution of laws, by regal authority, without consent of parliament, is illegal.

2. That the pretended power of dispensing with laws, or the execution of laws, by regal authority, as it hath been assumed and exercised of late, is illegal.

3. That the commission for erecting the late Court of Commissioners for Ecclesiastical Causes, and all other commissions and courts of like nature, are illegal and pernicious.

4. That levying money for or to the use of the Crown, by pretense of prerogative, without grant of parliament, for longer time or in other manner than the same is or shall be granted, is illegal.

5. That it is the right of the subjects to petition the king, and all commitments and prosecutions for such petitioning are illegal.

6. That the raising or keeping of a standing army within the kingdom in time of peace, unless it be with consent of parliament, is against law.

7. That the subjects which are Protestants may have arms for their defense suitable to their conditions, and as allowed by law.

8. That election of members of parliament ought to be free.

9. That the freedom of speech, and debates or proceedings in parliament, ought not to be impeached or questioned in any court or place out of parliament.

10. That excessive bail ought not to be required, nor

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excessive fines imposed; nor cruel and unusual punishments inflicted.

11. That jurors ought to be duly impaneled and returned, and jurors which pass upon men in trials for high treason ought to be freeholders.

12. That all grants and promises of fines and forfeitures of particular persons before conviction, are illegal and void.

13. And that for redress of all grievances, and for the amending, strengthening, and preserving of the laws, parliament ought to be held frequently.

And they do claim, demand, and insist upon all and singular the premises, as their undoubted rights and liberties; and that no declarations, judgments, doings, or proceedings, to the prejudice of the people in any of the said premises, ought in any wise to be drawn hereafter into consequence or example.

To which demand of their rights they are particularly encouraged by the declaration of his Highness the Prince of Orange, as being the only means for obtaining a full redress and remedy therein.

Having therefore an entire confidence that his said Highness the Prince of Orange will perfect the deliverance so far advanced by him, and will still preserve them from the violation of their rights, which they have here asserted, and from all other attempts upon their religion, rights, and liberties:

II. The said Lords Spiritual and Temporal, and Commons, assembled at Westminster, do resolve, that William and Mary, Prince and Princess of Orange, be, and be declared, King and Queen of England, France, and Ireland, and the dominions thereunto belonging, to hold the Crown and royal dignity of the said kingdoms and dominions to them the said Prince and Princess during their

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lives, and the life of the survivor of them; and that the sole and full exercise of the regal power be only in, and executed by, the said Prince of Orange, in the names of the said Prince and Princess, during their joint lives; and after their deceases, the said Crown and royal dignity of the said kingdoms and dominions to be to the heirs of the body of the said Princess; and for default of such issue to the Princess Anne of Denmark, and the heirs of her body; and for default of such issue to the heirs of the body of the said Prince of Orange. And the Lords Spiritual and Temporal, and Commons, do pray the said Prince and Princess to accept the same accordingly.

III. And that the oaths hereafter mentioned be taken by all persons of whom the oaths of allegiance and supremacy might be required by law, instead of them; and that the said oaths of allegiance and supremacy be abrogated.

I, A.B., do sincerely promise and swear, That I will be faithful and bear true allegiance to their Majesties King William and Queen Mary:                      So help me God.

I, A.B., do swear, That I do from my heart, abhor, detest, and abjure as impious and heretical, that damnable doctrine and position, that Princes excommunicated or deprived by the Pope, or any authority of the See of Rome, may be deposed or murdered by their subjects, or any other whatsoever. And I do declare, That no foreign prince, person, prelate, state, or potentate hath, or ought to have, any jurisdiction, power, superiority, pre-eminence, or authority ecclesiastical or spiritual, within this realm:                      So help me God.

IV. Upon which their said Majesties did accept the

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Crown and royal dignity of the kingdoms of England, France, and Ireland, and the dominions thereunto belonging, according to the resolution and desire of the said Lords and Commons contained in the said declaration.

V. And thereupon their Majesties were pleased, that the said Lords Spiritual and Temporal, and Commons, being the two Houses of Parliament, should continue to sit, and with their Majesties' royal concurrence make effectual provision for the settlement of the religion, laws, and liberties of this kingdom, so that the same for the future might not be in danger again of being subverted; to which the said Lords Spiritual and Temporal, and Commons, did agree and proceed to act accordingly.

VI. Now in pursuance of the premises, the said Lords Spiritual and Temporal, and Commons, in parliament assembled, for the ratifying, confirming, and establishing the said declaration, and the articles, clauses, matters, and things therein contained, by the force of law made in due form by authority of parliament, do pray that it may be declared and enacted, That all and singular the rights and liberties asserted and claimed in the said declaration, are the true, ancient, and indubitable rights and liberties of the people of this kingdom, and so shall be esteemed, allowed, adjudged, deemed, and taken to be, and that all and every the particulars aforesaid shall be firmly and strictly holden and observed, as they are expressed in the said declaration; and all officers and ministers whatsoever shall serve their Majesties and their successors according to the same in all times to come.

VII. And the said Lords Spiritual and Temporal, and Commons, seriously considering how it has pleased Almighty God, in His marvelous providence, and merciful goodness to this nation, to provide and preserve their

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said Majesties' royal persons most happily to reign over us upon the throne of their ancestors, for which they render unto Him from the bottom of their hearts their humblest thanks and praises, do truly, firmly, assuredly, and in the sincerity of their hearts, think, and do hereby recognize, acknowledge, and declare, that King James II. having abdicated the government, and their Majesties having accepted the Crown and royal dignity aforesaid, their said Majesties did become, were, are, and of right ought to be, by the laws of this realm, our sovereign liege Lord and Lady, King and Queen of England, France, and Ireland, and the dominions thereunto belonging, in and to whose princely persons the royal State, Crown, and dignity of the same realms, with all honors, styles, titles, regalities, prerogatives, powers, jurisdictions, and authorities to the same belonging and appertaining, are most fully, rightfully, and entirely invested and incorporated, united, and annexed.

VIII. And for preventing all questions and divisions in this realm, by reason of any pretended titles to the Crown, and for preserving a certainty in the succession thereof, in and upon which the unity, peace, tranquility, and safety of this nation doth, under God, wholly consist and depend, the said Lords Spiritual and Temporal, and Commons, do beseech their Majesties that it may be enacted, established, and declared, that the Crown and regal government of the said kingdoms and dominions, with all and singular the premises thereunto belonging and appertaining, shall be and continue to their said Majesties, and the survivor of them, during their lives, and the life of the survivor of them. And that the entire, perfect, and full exercise of the regal power and government be only in, and executed by, his Majesty, in the names of both their Majesties during their joint lives;

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and after their deceases the said Crown and premises shall be and remain to the heirs of the body of her Majesty: and for default of such issue, to her Royal Highness the Princess Anne of Denmark, and the heirs of her body; and for default of such issue, to the heirs of the body of his said Majesty: and thereunto the said Lords Spiritual and Temporal, and Commons, do, in the name of all the people aforesaid, most humbly and faithfully submit themselves, their heirs and posterities, for ever: and do faithfully promise, That they will stand to, maintain, and defend their said Majesties, and also the limitation and succession of the Crown herein specified and contained, to the utmost of their powers, with their lives and estates, against all persons whatsoever that shall attempt anything to the contrary.

IX. And whereas it hath been found by experience, that it is inconsistent with the safety and welfare of this Protestant kingdom, to be governed by a Popish prince, or by any king or queen marrying a Papist, the said Lords Spiritual and Temporal, and Commons, do further pray that it may be enacted, That all and every person and persons that is, are, or shall be reconciled to, or shall hold communion with, the See or Church of Rome, or shall profess the Popish religion, or shall marry a Papist, shall be excluded, and be for ever incapable to inherit, possess, or enjoy the Crown and government of this realm, and Ireland, and the dominions thereunto belonging, or any part of the same, or to have, use, or exercise any regal power, authority, or jurisdiction within the same; and in all and every such case or cases the people of these realms shall be and are hereby absolved of their allegiance; and the said Crown and government shall from time to time descend to, and be enjoyed by, such person or persons, being Protestants, as should have inherited and enjoyed

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the same, in case the said person or persons so reconciled holding communion, or professing, or marrying as aforesaid, were naturally dead.

X. And that every king and queen of this realm, who at any time hereafter shall come to and succeed in the Imperial Crown of this kingdom, shall, on the first day of the meeting of the first parliament, next after his or her coming to the Crown, sitting in his or her throne in the House of Peers, in the presence of the Lords and Commons therein assembled, or at his or her coronation, before such person or persons who shall administer the coronation oath to him or her, at the time of his or her taking the said oath (which shall first happen), make, subscribe, and audibly repeat the declaration mentioned in the statute made in the thirteenth year of the reign of King Charles II., intituled "An Act for the more effectual preserving the King's person and government, by disabling Papists from sitting in either House of Parliament." But if it shall happen, that such king or queen, upon his or her succession to the Crown of this realm, shall be under the age of twelve years, then every such king or queen shall make, subscribe, and audibly repeat the said declaration at his or her coronation, or the first day of meeting of the first parliament as aforesaid, which shall first happen after such king or queen shall have attained the said age of twelve years.

XI. All of which their Majesties are contented and pleased shall be declared, enacted, and established by authority of this present parliament, and shall stand, remain, and be the law of this realm for ever; and the same are by their said Majesties, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in parliament assembled, and by the authority of the same, declared, enacted, or established accordingly.



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XII. And be it further declared and enacted by the authority aforesaid, That from and after this present session of parliament, no dispensation by *non obstante* of or to any statute, or any part thereof, shall be allowed, but that the same shall be held void and of no effect, except a dispensation be allowed of in such statute, and except in such cases as shall be specially provided for by one or more bill or bills to be passed during this present session of parliament.

XIII. Provided that no charter, or grant, or pardon granted before the three-and-twentieth day of October, in the year of our Lord one thousand six hundred eighty-nine, shall be any ways impeached or invalidated by this act, but that the same shall be and remain of the same force and effect in law, and no other, than as if this act had never been made.



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